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## Exempt Action Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) citation(s)</b>	9VAC25-820
<b>Regulation title(s)</b>	
<b>Action title</b>	General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
<b>Date this document prepared</b>	September 7, 2015

While a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Administrative Process Act (APA), the agency is still 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, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.*

This action consists of the reissuance of 9 VAC25-820 General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia. The regulation provides for the permitting of Total Nitrogen and Total Phosphorus discharges in the Chesapeake Bay watershed and allows for trading of nutrient credits to minimize costs to the regulated facilities and allow for future growth.

Amendments are proposed to update and clarify definitions, effective dates, monitoring frequencies and sample types, quantification level requirements, trading ratio provisions, new waste load allocations for some facilities as required by the December 29, 2010 Chesapeake Bay TMDL with associated compliance schedule requirements and conditions applicable to all VPDES permits.

**[If the NOIRA included a periodic review/small business impact review, insert:**

In addition, a periodic review/small business impact review was conducted as part of this regulatory action. Please see the periodic review/small business impact review result section for additional information.]

**Acronyms and Definitions**

*Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the “Definition” section of the regulations.*

- DEQ: Department of Environmental Quality
- DMR: Discharge Monitoring Report
- EPA (U.S. EPA): United States Environmental Protection Agency
- HRSD: Hampton Roads Sanitary District
- MGD: Millions of Gallons per Day
- NPDES: National Pollutant Discharge Elimination System
- QL: Quantification level
- STP: Sewage Treatment Plant
- TMDL: Total Maximum Daily Load
- TN: Total Nitrogen
- TP: Total Phosphorus
- USC: United States Code
- VAC: Virginia Administrative Code
- VPDES: Virginia Pollutant Discharge Elimination System
- WTF: Wastewater Treatment Facility
- WWTP; Wastewater Treatment Plant

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including: 1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable; and 2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

The basis of this regulation is §62.1-44.19:14 of the Code of Virginia which directs the State Water Control Board to issue a Watershed General Virginia Pollutant Discharge Elimination System (VDPES) Permit authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries. Section 402 of the Clean Water Act (33 USC 1251 et seq.) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991 to authorize the Commonwealth to administer a General VPDES Permit Program. Legal authority for issuing general permits under State Water Control Law is §62.1-44.15(5), 15(10), and 15(14).

**Purpose**

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Describe the specific reasons the regulation is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

This rulemaking is proposed in order to amend and reissue the existing general permit which expires on December 31, 2016. 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.

### Substance

*Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the “Detail of changes” section below.*

The most significant changes to the regulation are:

- (1) Reduced nutrient wastload allocations for the significant dischargers to the James River Basin. This includes reduced TN waste load allocations for the HRSD facilities and reduced TP waste load allocations for all but two of the significant James River dischargers along with associated schedules of compliance. These reductions are necessary to implement the Commonwealth of Virginia Chesapeake Bay TMDL Phase I Watershed Implementation Plan dated November 29, 2010.
- (2) Increased monitoring frequencies for facilities with design flows between 5.0 and 19.999 MGD and between 0.5 and 0.999 MGD. These changes are expected to provide a more accurate measure of the annual nutrient load from these facilities.
- (3) The addition of maximum quantification level requirements to ensure accurate quantification of nutrient loads
- (4) The addition of a provision to allow at nonpoint source to point source trading ratio of less than 2:1 with an associated public notice requirement.
- (5) Updated prices of TN and TP credit purchases from the Nutrient Offset Fund based on the cost of projects financed by the fund over the previous permit cycle.
- (6) Updated TN and TP delivery factors.

### Issues

*Please identify the issues associated with the proposed regulatory action, 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, please indicate.*

The primary advantages to the public and to the agency of reissuing the general permit include minimizing compliance costs through implementation of nutrient trading and savings associated with the administration of a single watershed general permit. The regulatory action poses no disadvantages to the public or to the Commonwealth.

**Requirements more restrictive than federal**

*Please identify and describe any requirement of the proposal which is more restrictive than applicable federal requirements. Include a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements or no requirements that exceed applicable federal requirements, include a statement to that effect.*

There are no requirements that exceed applicable federal requirements.

**Localities particularly affected**

*Please identify any locality particularly affected by the proposed regulation. Locality particularly affected means any locality which bears any identified disproportionate material impact which would not be experienced by other localities.*

This regulation is applicable throughout the Chesapeake Bay Watershed. The proposed amendments to the regulation, with one exception, also apply throughout the watershed. The regulation implements the Commonwealth of Virginia Chesapeake Bay TMDL Phase I Watershed Implementation Plan dated November 29, 2010 including reduced nutrient waste load allocations for the following facilities: Buena Vista STP, Covington STP, Georgia Pacific Big Island, Mohawk Industries, Lexington-Rockbridge Regional Water Quality Control Facility, Low Moor STP, Lower Jackson River STP, Clifton Forge STP, MeadWestvaco, Amherst-Rutledge Creek WWTP, BWX Technologies Inc., Greif Inc., Lake Monticello STP, Lynchburg STP, Moores Creek Regional STP, Powhatan Correctional Center STP, Crewe WWTP, Farmville WWTP, Richmond WWTP, E.I. DuPont-Spruance, Falling Creek WWTP, Proctors Creek WWTP, Dominion-Chesterfield Power Station, Henrico County WWTP, The Sustainability Park LLC, Philip Morris USA-Park 500, Honeywell-Hopewell, Hopewell Regional WTF, South Central Wastewater Authority WWTF, HRSD Treatment Facilities (Boat Harbor STP, James River STP, Williamsburg STP, Nansemond STP, Army Base STP, Virginia Initiative Plant WWTP and Chesapeake-Elizabeth STP), and JH miles & Company.

The proposed amendments applicable throughout the watershed are not expected to impose a disproportionate material water quality impact on any locality that would not be experienced by the other localities. The proposed reduced waste load allocations associated with the facilities listed in the preceding paragraph may imply that the localities where these facilities are located are localities particularly affected. However, whether there is a disproportionate material water quality impact on these localities that is not experienced by other localities is questionable as all localities within the Chesapeake Bay Watershed share the water quality impacts.

**Alternatives**

*Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulation.*

As §62.1-44.19:14 of the Code of Virginia directs the State Water Control Board to issue this regulation, there are no viable alternatives.

## Public participation

*Please include a statement that in addition to any other comments on the proposal, the agency is seeking comments on the costs and benefits of the proposal, the impacts of the regulated community and the impacts of the regulation on farm or forest land preservation.*

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In addition to any other comments, the State Water Control Board is seeking comments on the costs and benefits of the proposal, the potential impacts of this regulatory proposal and any impacts of the regulation on farm and forest land preservation. Also, the agency/board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so by mail, email or fax to Matthew Richardson, Department of Environmental Quality, Office of VPDES Permits, PO Box 1105, Richmond, VA 23218, (804) 698-4195 (phone), (804) 698-4032 (fax) or [matthew.richardson@deq.virginia.gov](mailto:matthew.richardson@deq.virginia.gov). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: <http://www.townhall.virginia.gov>. Written comments must include the name and address of the commenter. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

A public hearing will be held following the publication of this stage and notice of the hearing will be posted on the Virginia Regulatory Town Hall website (<http://www.townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://www.virginia.gov/connect/commonwealth-calendar>). Both oral and written comments may be submitted at that time.

## Family impact

*Please 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.*

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This regulation will have no direct impact on the institution of the family or family stability.

## Periodic review/small business impact review announcement

*If you wish to use this exempt proposed stage to announce a periodic review (§ 2.2-4017 & EO-17 (2014)) and a small business impact review (§ 2.2-4007.1) of this regulation, keep the following text. Modify as necessary for your agency. Otherwise, delete this section.*

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In addition, pursuant to Executive Order 17 (2014) and § 2.2-4007.1 of the Code of Virginia, the agency is conducting a periodic review and small business impact review of this regulation to determine whether this regulation should be terminated, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important

governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

### Detail of changes

*Please list all changes that are being proposed and the consequences of the proposed changes; explain the new requirements and what they mean rather than merely quoting the proposed text of the regulation. If the proposed regulation is a new chapter, describe the intent of the language and the expected impact. Please describe the difference between existing regulation(s) and/or agency practice(s) and what is being proposed in this regulatory action. If the proposed regulation is intended to replace an emergency regulation, please list separately: (1) all differences between the **pre-emergency** regulation and this proposed regulation; and 2) only changes made since the publication of the emergency regulation.*

[For changes to existing regulation(s) or regulations that are being repealed and replaced, use this chart:]

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change, intent, rationale, and likely impact of proposed requirements
10		"Director" definition	Definition added to clarify the term for this permit regulation
		"Tributary" definition	Definition modified to refer to Chesapeake Bay TMDL in accordance with current Code of Virginia.
		Miscellaneous definitions	Numerous grammatical changes made to provide clarity to definitions
	15		Added " <i>Applicability of incorporated references based on the dates that they became effective.</i> " This section was added to update all references to Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2014. This was a recommendation from the DEQ Office of Policy so that dates do not need to be added for each CFR reference
40.A		Required submittal of a compliance plan by 7/1/12 for facilities subject to reduced waste load allocations in the Chesapeake Bay TMDL and included in 9VAC25-820-80..	Requires submittal of a compliance plan by July 1, 2017 for facilities identified in 9VAC25-820-80 and subject to a limit effective date after January 1, 2017 as defined in 9-VAC25-820-70 I C 1. This change in combination with the changes in the sections referenced above requires a compliance plan from the Hampton Roads Sanitation District James River facilities for Total Nitrogen reductions identified in Virginia's Phase I Watershed Implementation Plan as well as Appendix X to the Chesapeake Bay TMDL.
40.A.3		Compliance plan reference to Water Quality Improvement Fund	"Water Quality Improvement Fund" replaced with " <u>Nutrient Offset Fund</u> " to reflect current state code (§10.1-2128.2)
70		Effective date of permit	Changed the effective (2017) and expiration (2021) dates to reflect the reissuance date of the permit.
70.I.A.3.		Continuation of permit coverage	Updated and made editorial changes as follows:  "a. Any owner authorized to discharge under this general permit and who submits a complete registration statement for the reissued general permit by November 1, <del>2016</del> 2021, in accordance with Part III A or who is not required to register in accordance with Part I A 2 is authorized to continue to discharge under the terms of this

			<p>general permit until such time as the board either:</p> <p>(1) Issues coverage to the owner under the reissued general permit, or</p> <p>(2) Notifies the owner that <u>the discharge is not eligible for coverage under the reissued this general permit-is denied.</u></p> <p>b. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:</p> <p>(1) Initiate enforcement action based upon the <u>2012 general permit-that has been continued,</u></p> <p>(2) Issue a notice of intent to deny coverage under the <del>amended</del> <u>reissued general permit. #If the general permit coverage is denied, the owner would then be required to cease the activities discharges authorized by the administratively continued coverage under the terms of the 2012 general permit or be subject to enforcement action for operating without a permit, or</u></p> <p>(3) Take other actions authorized by the State Water Control Law.”</p>
70.I.B.3.c		Aggregate registration of facilities not subject to waste load allocations included in the Water Quality Management Planning Regulation (9VAC25-720-50.C thru 120.C) are not eligible to generate credits.	The language restricting the ability of these facilities to generate credits has been stricken to reflect the same provision being stricken from the Code of Virginia. The effect is that smaller, “non-significant” dischargers can generate credits and fully participate in the trading program.
70.I.C.1.a		York River Phosphorus schedule of compliance date of January 1, 2016.	References to the York River Phosphorus schedule of compliance have been deleted as this schedule will have been completed prior to the effective date of the reissued general permit. Effective dates for James River Phase 2 Total Nitrogen (January 1, 2022) and James River Phase 2 Total Phosphorus (January 1, 2017) waste load allocations are established for the new waste load allocations included in 9VAC25-820.80. No schedule of compliance is established for the new Total Phosphorus waste load allocations because the watershed aggregate waste load is currently being met and §62.1-44.19.14.C.2 of the Code of Virginia requires compliance with the new waste load allocations as soon as possible.
70.I.C.2.b		Waiving of compliance schedules	Reference to 9VAC25-820-70 replaced with “ <u>9VAC25-820-80</u> ” and compliance date updated from 2012 to “ <u>2017</u> ” to reflect location of listing of facilities subject to a compliance schedule and the reissued permit term.
70.I.D.		Annual update of compliance plan reference to Water Quality Improvement Fund	“Water Quality Improvement Fund” replaced with “ <u>Nutrient Offset Fund</u> ” to reflect current state code (§10.1-2128.2)
70.I.E.1.		Monitoring Requirements	Sample collection frequencies were modified to require more frequent sampling at certain facilities. A new sampling frequency of “ <u>2/Week*</u> ” was established for facilities designed to discharge between 5.0 and 19.999 Million Gallons per Day (MGD). A new sampling frequency of “ <u>4/Month**</u> ” was established for facilities designed to discharge between 0.5 and 0.999 MGD.

			<p>These increased monitoring frequencies were made to more accurately quantify the annual nutrient loads from these facilities and to reflect the minimum monitoring frequency typically necessary for process control. In order to minimize any increase in laboratory analysis costs, the following footnotes to the new monitoring frequencies have been included:</p> <p><u>** Two 24-hour flow composited samples taken in the same calendar week which are then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement.</u></p> <p><u>** Two sets of two 8-hour flow composited samples taken at least one day apart but in the same calendar week which are then composited by flow into two weekly composite samples per month for analysis shall be considered to be in compliance with this requirement.</u></p>										
70.I.E.4.		Treatment of total phosphorus data below the quantification level	<p>Treatment of total phosphorus data below the quantification level was modified as follows:  <u>"For total phosphorus, all daily concentration data below the quantification level (QL) for the analytical method used <del>should</del> shall be treated as half the QL."</u>                  This change clarifies intent and makes the provision consistent with the handling of total nitrogen data below the quantification level.</p>										
70.I.E.4.			<p>New maximum quantification levels were added for nitrogen parameters to eliminate the possible gaming of the permit language. Without this change the treatment of total nitrogen data below the quantification level would allow a party to report lower than actual total nitrogen loads by choosing higher quantification levels. The following language was added to the permit which is consistent with similar provisions in individual VPDES permits:</p> <p><u>"The quantification levels (QL) shall be less than or equal to the following concentrations:</u></p> <table border="1"> <thead> <tr> <th><u>Parameter</u></th> <th><u>Quantification Level</u></th> </tr> </thead> <tbody> <tr> <td><u>TKN</u></td> <td><u>0.50 mg/l</u></td> </tr> <tr> <td><u>Nitrite</u></td> <td><u>0.10 mg/l</u></td> </tr> <tr> <td><u>Nitrate</u></td> <td><u>0.20 mg/l</u></td> </tr> <tr> <td><u>Nitrite + Nitrate</u></td> <td><u>0.20 mg/l</u></td> </tr> </tbody> </table> <p><u>Higher QLs may be approved on a case by case basis where a higher QL routinely results in reportable results of the species in question or is otherwise technically appropriate based on standard lab practices."</u></p>	<u>Parameter</u>	<u>Quantification Level</u>	<u>TKN</u>	<u>0.50 mg/l</u>	<u>Nitrite</u>	<u>0.10 mg/l</u>	<u>Nitrate</u>	<u>0.20 mg/l</u>	<u>Nitrite + Nitrate</u>	<u>0.20 mg/l</u>
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70.I.I		Public notice for registration statements proposing modification or incorporations of new waste load allocations or delivery factors.	<p>Added the following provision to allow for public comment on any proposed nonpoint source-to-point source trading ratio less than 2:1 allowed by new provisions under 9VAC25-820.II.B.1.b.(1):</p> <p><u>"e. If applicable, any proposed nonpoint source to point source trading ratio less than 2:1 proposed under Part II 1 b (1)."</u></p>										
70.I.J.1.c.		Compliance with waste load allocations reference to Water Quality	<p>"Water Quality Improvement Fund" replaced with <u>"Nutrient Offset Fund"</u> to reflect current state code (§10.1-2128.2)</p>										



		Improvement Fund	
70.I.J.2.e.		Credit acquisition from owners of permitted facilities reference to Water Quality Improvement Fund	"Water Quality Improvement Fund" replaced with " <u>Nutrient Offset Fund</u> " to reflect current state code (§10.1-2128.2)
70.I.J.3.		Credit acquisitions references to Water Quality Improvement Fund  Payments to the Fund for nitrogen credits	"Water Quality Improvement Fund" replaced with " <u>Nutrient Offset Fund</u> " to reflect current state code (§10.1-2128.2)  Prices for purchases from the Fund are updated as follows: <del>Payments to the Water Quality Improvement Fund shall be in the amount of \$6.04 for each pound of nitrogen and \$15.08 for each pound of phosphorus and shall be subject to the following requirements:</del> <u>Payments to the Nutrient Offset Fund shall be in the amount of \$4.60 for each pound of nitrogen and \$10.10 for each pound of phosphorus and shall be subject to the following requirements:</u> These prices reflect the average cost of nutrient removal at projects financed by the Water Quality Improvement Fund over the previous 5 years.
70.II.B.1.b.		Acquisition of waste load allocations	<i>"1. Such allocations may be acquired from one or a combination of the following:</i>  <i>a. Acquisition of all or a portion of the waste load allocations or point source nitrogen or point source phosphorus credits from the owners of one or more permitted facilities, based on delivered pounds by the respective trading parties as listed by the department;</i>  <i>b. Acquisition of credits certified by the board pursuant to § 62.1-44.19:20 of the Code of Virginia or certified by the Soil and Water Conservation Board pursuant to § 10.1-603.15:2 of the Code of Virginia. Credits used to offset new or increased nutrient loads under this subdivision shall be:</i>  <i>(1) Subject to a trading ratio of two pounds reduced for every pound to be discharged if certified as a nonpoint source credit by the Soil and Water Conservation Board pursuant to § 10.1-603.15:2 of the Code of Virginia; On a case-by-case basis the board may approve nonpoint source to source trading ratios of less than 2:1 (but not less than 1:1) when the applicant demonstrates factors that ameliorate the presumed 2:1 uncertainty ratio for credits generation by nonpoint sources such as:</i>  <i>(a) When direct and representative monitoring of the pollutant loadings from a nonpoint source is performed in a manner and at a frequency similar to that performed at VPDES point sources and there is consistency in the effectiveness of the operation of the nonpoint source BMP approaching that of a conventional point source.</i>  <i>(b) When nonpoint source credits are generated from land conservation that ensures permanent protection through a conservation easement or other instrument attached to the deed and when load reductions can be reliably determined.</i>  These changes reflect the transfer of the responsibility to certify nonpoint source credits from the Department of Conservation to the Department of Environmental Quality

			as well as the allowance of nonpoint source-to-point source trading ratios less than 2:1 under limited circumstances. The application of the provision for nonpoint-to-point source trading ratios less than 2:1 is subject to public comment and is expected to occur very rarely.
70.II.B.1.c.		Acquisition of waste load allocations reference to Water Quality Improvement Fund	"Water Quality Improvement Fund" replaced with " <u>Nutrient Offset Fund</u> " to reflect current state code (§10.1-2128.2)
70.II.B.4.		Provision addressing pricing of annual allocation acquisitions from the Fund	The following modifications were made to replace "Water Quality Improvement Fund" with " <u>Nutrient Offset Fund</u> " to reflect current state code (§10.1-2128.2) and to delete outdated references to the Department of Conservation and Recreation: <del>"4. Annual allocation acquisitions from the Water Quality Improvement Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the WQI</del> <u>Nutrient Offset Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the</u> <del>WQI</del> <u>Nutrient Offset Fund, based on the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the Department of Conservation and Recreation</u> <del>department</del> <u> on an annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.</u>
70.III		Conditions Applicable to all VPDES Permits	A wholesale replacement was made to Section 70.III Conditions Applicable to all VPDES Permits to replace outdated language and to ensure consistency with other general VPDES permits as well as 9VAC-31-190 Conditions applicable to all permits. The modifications are as follows:  <p style="text-align: center;"><i>"Part III Conditions Applicable To All VPDES Permits</i></p> <p><i><del>A. Monitoring-</del></i></p> <ol style="list-style-type: none"> <li><del>1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.</del></li> <li><del>2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.</del></li> <li><del>3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.</del></li> <li><del>4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).</del></li> </ol> <p><i><del>B. Records-</del></i></p> <ol style="list-style-type: none"> <li><del>1. Records of monitoring information shall include:</del></li> </ol>

			<p><i>a. The date, exact place, and time of sampling or measurements;</i></p> <p><i>b. The individual(s) who performed the sampling or measurements;</i></p> <p><i>c. The date(s) and time(s) analyses were performed;</i></p> <p><i>d. The individual(s) who performed the analyses;</i></p> <p><i>e. The analytical techniques or methods used; and</i></p> <p><i>f. The results of such analyses.</i></p> <p><i>2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.</i></p> <p><i>G. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the board request that the permittee submit monitoring results, the following subsections would apply.</i></p> <p><i>1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.</i></p> <p><i>2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.</i></p> <p><i>3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.</i></p> <p><i>4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.</i></p>
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		<p><del>D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.</del></p> <p><del>E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.</del></p> <p><del>F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:</del></p> <ol style="list-style-type: none"> <li><del>1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or</del></li> <li><del>2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.</del></li> </ol> <p><del>G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:</del></p> <ol style="list-style-type: none"> <li><del>1. A description of the nature and location of the discharge;</del></li> <li><del>2. The cause of the discharge;</del></li> <li><del>3. The date on which the discharge occurred;</del></li> <li><del>4. The length of time that the discharge continued;</del></li> <li><del>5. The volume of the discharge;</del></li> <li><del>6. If the discharge is continuing, how long it is expected to continue;</del></li> <li><del>7. If the discharge is continuing, what the expected total volume of the discharge will be; and</del></li> <li><del>8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit.</del></li> </ol> <p><del>Discharges reportable to the department under the</del></p>
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		<p><del>immediate reporting requirements of other regulations are exempted from this requirement.</del></p> <p><del>H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge resulting from:</del></p> <ol style="list-style-type: none"> <li><del>1. Unusual spillage of materials resulting directly or indirectly from processing operations;</del></li> <li><del>2. Breakdown of processing or accessory equipment;</del></li> <li><del>3. Failure or taking out of service some or all of the treatment works; and</del></li> <li><del>4. Flooding or other acts of nature.</del></li> </ol> <p><del>I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.</del></p> <ol style="list-style-type: none"> <li><del>1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:             <ol style="list-style-type: none"> <li><del>a. Any unanticipated bypass; and</del></li> <li><del>b. Any upset that causes a discharge to surface waters.</del></li> </ol> </del></li> <li><del>2. A written report shall be submitted within five days and shall contain:             <ol style="list-style-type: none"> <li><del>a. A description of the noncompliance and its cause;</del></li> <li><del>b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and</del></li> <li><del>c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.</del></li> </ol> <p><del>The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.</del></p> </del></li> <li><del>3. The permittee shall report all instances of noncompliance not reported under Part III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.</del></li> </ol> <p><del>NOTE: The immediate (within 24 hours) reports required in Parts III G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at <a href="http://www.deq.virginia.gov/Programs/PollutionResponse">http://www.deq.virginia.gov/Programs/PollutionResponse</a></del></p>
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			<p><del>Preparedness/MakingReport.aspx. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.</del></p> <p><del>J. Notice of planned changes.</del></p> <p><del>1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:</del></p> <p><del>a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:</del></p> <p><del>(1) After promulgation of standards of performance under Section 306 of the Clean Water Act that are applicable to such source; or</del></p> <p><del>(2) After proposal of standards of performance in accordance with Section 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal;</del></p> <p><del>b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or</del></p> <p><del>c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.</del></p> <p><del>2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.</del></p> <p><del>K. Signatory requirements.</del></p> <p><del>1. Registration statement. All registration statements shall be signed as follows:</del></p> <p><del>a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or</del></p>
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		<p>certification:</p> <p><i>"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."</i></p> <p><i>L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit coverage renewal application.</i></p> <p><i>The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.</i></p> <p><i>M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.</i></p> <p><i>N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.</i></p> <p><i>O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by Section 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U), and "upset" (Part III V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.</i></p> <p><i>P. Oil and hazardous substance liability. Nothing in</i></p>
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		<p><del>this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.</del></p> <p><del>Q. Proper operation and maintenance. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also include effective plant performance, adequate funding, adequate staffing, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.</del></p> <p><del>R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.</del></p> <p><del>S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.</del></p> <p><del>T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.</del></p> <p><del>U. Bypass.</del></p> <p><del>1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Parts III U-2 and 3.</del></p> <p><del>2. Notice.</del></p> <p><del>a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.</del></p> <p><del>b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.</del></p> <p><del>3. Prohibition of bypass.</del></p> <p><del>a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:</del></p> <p><del>(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;</del></p> <p><del>(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal</del></p>
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		<p><del>be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.</del></p> <p><del>X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.</del></p> <p><del>Y. Transfer of permits.</del>  <del>Permits are not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:</del></p> <ol style="list-style-type: none"> <li><del>1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;</del></li> <li><del>2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and</del></li> <li><del>3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2.</del></li> </ol> <p><del>Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.</del></p> <p><u>A. Monitoring.</u></p> <ol style="list-style-type: none"> <li><u>1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.</u></li> <li><u>2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.</u></li> <li><u>3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.</u></li> <li><u>4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).</u></li> </ol> <p><u>B. Records.</u></p> <ol style="list-style-type: none"> <li><u>1. Records of monitoring information shall include:</u> <ol style="list-style-type: none"> <li><u>a. The date, exact place, and time of sampling or measurements;</u></li> <li><u>b. The individual(s) who performed the sampling or measurements;</u></li> <li><u>c. The date(s) and time(s) analyses were</u></li> </ol> </li> </ol>
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		<p><u>performed:</u></p> <p><u>d. The individual(s) who performed the analyses:</u></p> <p><u>e. The analytical techniques or methods used; and</u></p> <p><u>f. The results of such analyses.</u></p> <p><u>2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.</u></p> <p><u>C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the board request that the permittee submit monitoring results, the following subsections would apply.</u></p> <p><u>1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.</u></p> <p><u>2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.</u></p> <p><u>3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.</u></p> <p><u>4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.</u></p> <p><u>D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to</u></p>
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		<p><u>discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse affects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge resulting from:</u></p> <ol style="list-style-type: none"> <li><u>1. Unusual spillage of materials resulting directly or indirectly from processing operations;</u></li> <li><u>2. Breakdown of processing or accessory equipment;</u></li> <li><u>3. Failure or taking out of service some or all of the treatment works; and</u></li> <li><u>4. Flooding or other acts of nature.</u></li> </ol> <p><u>I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.</u></p> <ol style="list-style-type: none"> <li><u>1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph:</u> <ol style="list-style-type: none"> <li><u>a. Any unanticipated bypass; and</u></li> <li><u>b. Any upset that causes a discharge to surface waters.</u></li> </ol> </li> <li><u>2. A written report shall be submitted within five days and shall contain:</u> <ol style="list-style-type: none"> <li><u>a. A description of the noncompliance and its cause;</u></li> <li><u>b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and</u></li> <li><u>c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.</u></li> </ol> <p><u>The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.</u></p> </li> <li><u>3. The permittee shall report all instances of noncompliance not reported under Part III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.</u></li> </ol> <p><u>NOTE: The immediate (within 24 hours) reports required in Parts III G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at <a href="http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx">http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx</a>. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-</u></p>
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			<p><u>800-468-8892.</u></p> <p><u>J. Notice of planned changes.</u></p> <p><u>1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:</u></p> <p><u>a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:</u></p> <p><u>(1) After promulgation of standards of performance under Section 306 of the Clean Water Act that are applicable to such source; or</u></p> <p><u>(2) After proposal of standards of performance in accordance with Section 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal;</u></p> <p><u>b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or</u></p> <p><u>c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.</u></p> <p><u>2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.</u></p> <p><u>K. Signatory requirements.</u></p> <p><u>1. Registration statement. All registration statements shall be signed as follows:</u></p> <p><u>a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment</u></p>
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			<p><u>recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;</u></p> <p><u>b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or</u></p> <p><u>c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.</u></p> <p><u>2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:</u></p> <p><u>a. The authorization is made in writing by a person described in Part III K 1;</u></p> <p><u>b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and</u></p> <p><u>c. The written authorization is submitted to the department.</u></p> <p><u>3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.</u></p> <p><u>4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:</u></p> <p><u>"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to</u></p>
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		<p><u>assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."</u></p> <p><u>L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit coverage renewal application.</u></p> <p><u>The permittee shall comply with effluent standards or prohibitions established under Section 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or disposal established under Section 405(d) of the Clean Water Act within the time provided in the regulations that establish these standards or prohibitions or standards for sewage sludge use or disposal, even if this permit has not yet been modified to incorporate the requirement.</u></p> <p><u>M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee shall submit a new registration statement at least 60 days before the expiration date of the existing permit, unless permission for a later date has been granted by the board. The board shall not grant permission for registration statements to be submitted later than the expiration date of the existing permit.</u></p> <p><u>N. Effect of a permit. This permit does not convey any property rights in either real or personal property or any exclusive privileges, nor does it authorize any injury to private property or invasion of personal rights, or any infringement of federal, state or local law or regulations.</u></p> <p><u>O. State law. Nothing in this permit shall be construed to preclude the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to, any other state law or regulation or under authority preserved by Section 510 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U), and "upset" (Part III V) nothing in this permit shall be construed to relieve the permittee from civil and criminal penalties for noncompliance.</u></p> <p><u>P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the State Water Control Law.</u></p>
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			<p><u>during normal periods of equipment downtime or preventive maintenance; and</u>  <u>(3) The permittee submitted notices as required under Part III U 2.</u>  <u>b. The board may approve an anticipated bypass after considering its adverse effects if the board determines that it will meet the three conditions listed above in Part III U 3</u>  <u>a.</u></p> <p><u>V. Upset.</u>  <u>1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.</u>  <u>2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:</u>  <u>a. An upset occurred and that the permittee can identify the cause(s) of the upset;</u>  <u>b. The permitted facility was at the time being properly operated;</u>  <u>c. The permittee submitted notice of the upset as required in Part III I; and</u>  <u>d. The permittee complied with any remedial measures required under Part III S.</u>  <u>3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.</u></p> <p><u>W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:</u>  <u>1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;</u>  <u>2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;</u>  <u>3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and</u>  <u>4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.</u></p> <p><u>For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.</u></p> <p><u>X. Permit actions. Permits may be modified, revoked</u></p>
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			<p><u>and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.</u></p> <p><u>Y. Transfer of permits.</u></p> <p><u>Permits are not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:</u></p> <p><u>1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;</u></p> <p><u>2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and</u></p> <p><u>3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the agreement mentioned in Part III Y 2.</u></p> <p><u>Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.”</u></p>
80		This section includes TP waste load allocations for York Basin dischargers as required by the Chesapeake Bay TMDL.	Eliminate the York River TP waste load allocations as they are now incorporated in 9VAC25-720 (Water Quality Management Planning Regulation) and includes reduced TN and TP waste load allocations for James River Basin dischargers in accordance with the Commonwealth of Virginia Chesapeake Bay TMDL Phase I Watershed Implementation Plan dated November 29, 2010. This includes establishing individual TP waste load allocations for the James River dischargers..
10 thru 80			There are numerous minor grammatical and editorial changes throughout the regulation that do not change the intent of the regulatory provision.

### 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) 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 9VAC25-40 (the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed) and 9VAC25-720 (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 regulations, and is intended to provide an alternative means of compliance in order to save the regulated entities money.

127 facilities were initially affected by this regulation, most of which are publicly owned treatment works or large industrial facilities. One facility (J.H. Miles) is categorized as a small business. Certain smaller new or expanded dischargers are required to register for general permit coverage in accordance with §62.1-44.19:14C.5 and §62.1-44.19:15 of the Code of Virginia. These facilities would also be subject to 9VAC25-40 (the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed). This proposed general permit should provide these new or expanding facilities compliance flexibility.