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## Notice of Intended Regulatory Action (NOIRA) 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>	General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
<b>Action title</b>	Amend and Reissue the NT General Permit
<b>Date this document prepared</b>	January 20, 2015

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Subject matter and intent

*Please describe briefly the subject matter, intent, and goals of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

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.

In addition, a periodic/small business impact review of this regulation will be conducted as part of this regulatory action. Please see the Agency Background Document located at [www.townhall.virginia.gov](http://www.townhall.virginia.gov) for the specific details on the conduct of the review.

### Legal basis

*Please identify (1) the agency (includes any type of promulgating entity) and (2) the state and/or federal legal authority for the proposed regulatory action, including the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable. Your citation should include a specific*

*provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency’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 VDPES Permit Program.

**Purpose**

*Please describe the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, please explain any potential issues that may need to be addressed as the regulation is developed.*

This proposed regulatory action restores and protects water quality in the Chesapeake Bay watershed which is essential to the health, safety and welfare of Virginia’s citizens. The proposed action authorizes wastewater discharges of nitrogen and phosphorus from wastewater treatment facilities already authorized by a Virginia Pollutant Discharge Elimination System permit. The general permit establishes annual effluent loading limits for nitrogen and phosphorus, and establishes the conditions by which credits (the difference in pounds between the facility’s limit and the mass actually discharged) may be exchanged. The general permit also establishes how any increase in nitrogen or phosphorus loading from a new or expanding discharger must be offset by other nutrient reductions elsewhere in the basin. The primary issue that needs to be addressed is that the existing general permit expires on December 31, 2016 and must be reissued in order to continue making it available after that date. The regulation also needs to be modified to establish interim, dissolved oxygen-based wasteload nitrogen and phosphorus allocations for significant dischargers in the James River basin along with appropriate schedules of compliance. Modifications to implement Chlorophyll-a based individual wasteload allocations in the James River basin will be subject to a separate rulemaking.

**Substance**

*Please briefly identify and explain the new substantive provisions that are being considered, the substantive changes to existing sections that are being considered, or both.*

Changes to the existing general permit regulation include changing the effective dates of the general permit to January 1, 2017 through December 31, 2021 and the inclusion of interim, dissolved oxygen-based wasteload allocations for significant dischargers in the James River basin along with appropriate schedules of compliance. Amendments may be identified following the submittal of public comments on this notice or as the issues identified in “Need” are considered.

**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 indicate whether the agency is seeking comments on the intended regulatory action, including ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments. Please include one of the following choices: (1) a panel will be appointed and the agency's contact if you're interested in serving on the panel is \_\_\_\_\_; (2) a panel will not be used; or (3) public comment is invited as to whether to use a panel to assist in the development of this regulatory proposal.*

The agency is seeking comments on this regulatory action, including but not limited to: (1) ideas to be considered in the development of this proposal; (2) the costs and benefits of the alternatives stated in this background document or other alternatives; (3) potential impacts of the regulation; and, (4) impacts of the regulation on farm and forest land preservation.

The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include: projected reporting, recordkeeping and other administrative costs; the probable effect of the regulation on affected small businesses; and the description of less intrusive or costly alternatives for achieving the purpose of the regulation.

In addition, please see the periodic review/small business impact review announcement section below for details on specific comments requested for the conduct of the review of this regulation being conducted as part of this regulatory action.

Anyone wishing to submit written comments may do so by mail, email or fax to Allan Brockenbrough, DEQ, Office of VPDES Permits, P.O. Box 1105, Richmond, VA 23218, phone 804/698-4147, fax 804/698-4032, email [allan.brockenbrough@deq.virginia.gov](mailto:allan.brockenbrough@deq.virginia.gov). Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site <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 before midnight on the last day of the public comment period.

### Public hearing at proposed stage

A public hearing will be held following the publication of the proposed stage of this regulatory action 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>).

**Periodic review/small business impact review announcement**

*If you wish to use this NOIRA 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.*

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; (iii) designed to achieve its intended objective in the most efficient, cost-effective manner; (iv) is clearly written and easily understandable; (v) overlaps, duplicates, or conflicts with federal or state law or regulation; and (vi) technology, economic conditions, or other factors have changed in the area affected by the regulation since the last review.

**Technical Advisory Committee**

*A technical advisory committee will be involved in the development of the proposed regulation.*

The Board is using a technical advisory committee to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.

**Family Impact**

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

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

**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  
EPA (U.S. EPA): United States Environmental Protection Agency  
NPDES: National Pollutant Discharge Elimination System  
TMDL: Total Maximum Daily Load  
USC: United States Code  
VAC: Virginia Administrative Code  
VPDES: Virginia Pollutant Discharge Elimination System