

**Electronic meeting materials for June 25, 2024, State Water Control Board meeting- page numbers listed correspond to page number of pdf document- all materials are draft documents for board consideration**

TENTATIVE AGENDA  
STATE WATER CONTROL BOARD MEETING

TUESDAY JUNE 25, 2024

IN PERSON ONLY – GALLERY, COMMUNITY COLLEGE WORKFORCE ALLIANCE,  
1651 EAST PARHAM ROAD, RICHMOND, VA 23228

Meeting will be Live-Streamed. Go to: [www.deq.virginia.gov](http://www.deq.virginia.gov)

Any Updates To Details/Final Arrangements To Be Announced On Virginia Regulatory Town Hall

Convene – 10:00 A.M

<b>Agenda Item</b>	<b>Presenter</b>	<b>Tab</b>
<b>Minutes</b> (February 23, 2023)	Porterfield	A pg 6
<b>Final Exempt Regulations</b>		
Virginia Erosion and Stormwater Management Regulation (9VAC25-875)- Amendment to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) in response to Chapters 5 (SB365) and 104 (HB656) of the 2024 Virginia Acts of Assembly	Morris	B pg 15
Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31), Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32), Sewage Collection and Treatment Regulations (9VAC25-790) - Amendments to licensed operator requirements in response to Chapter 178 (HB220) of the 2024 Virginia Acts of Assembly	Morris	C pg 34
Virginia Water Protection Permit Program Regulation (9VAC25-210) and the Groundwater Withdrawal Regulations (9VAC25-610) – Amendments in response to Chapter (SB581) of the 2024 Virginia Acts of Assembly	Morris	D pg 63
Citation corrections in response to codification of Virginia Erosion and Stormwater Management Regulation (9VAC25-875) and changes to the Code of Virginia in response to Chapters 68 and 758 of the 2016 Acts of Assembly becoming effective July 1, 2024	Morris	E pg 83
<ul style="list-style-type: none"> <li>• Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31)</li> <li>• Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (9VAC25-115)</li> <li>• Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151)</li> <li>• Virginia Water Protection Permit Regulation (9VAC25-210)</li> <li>• Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830)</li> </ul>		

<b>Agenda Item</b>	<b>Presenter</b>	<b>Tab</b>
<ul style="list-style-type: none"> <li>• Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) (9VAC25-890)</li> <li>• Certification of Nonpoint Source Nutrient Credits (9VCA25-900)</li> </ul>		
Water Quality Management Planning Regulation (9VAC25-720) - Amendment to add ten new TMDL wasteload allocations in the James River Basin (9VAC25-720-60 A) and Rappahannock River Basin (9VAC25-720-70 A)	Williams	F pg 259
<b>Final Regulations</b> Reissuance of Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192)	Bowles	G pg 333
<b>Fast Track Regulations</b> Water Quality Standards - Modification of Implementation Requirements for Criteria Specific to the Chesapeake Bay and Its Tidal Tributaries (9VAC25-260-185)	Thomas	H pg 463
Virginia Erosion and Stormwater Management Regulation (9VAC-25-875) - Amend and update the Virginia Runoff Reduction Method, total phosphorous load of new development projects, best management practices for water quality compliance, and other technical corrections	Rochet	I pg 492
Virginia Erosion and Stormwater Management Regulation (9VAC-25-875) - Technical corrections	Rochet	*M* pg 608
<b>Proposed Regulations</b> Water Quality Standards (9VAC-25-260) - Rulemaking to adopt site specific selenium aquatic life criteria for four streams which are tributaries to Knox Creek in Buchanan County	Thomas	J pg 522
Sewage Collection and Treatment Regulations (9VAC25-790)- Amendment to include a reporting requirement for all septic systems taken off-line and connected to sewerage systems	Bryan	K pg 560
<b>Petition for Rulemaking</b> Petition for Establishment of a Regulation or Policy Interpreting the Definition of a Nontidal Wetland Under 9VAC25-830-40, 9VAC25-830-80, and Fairfax County Ordinance 118-6-1(q)	Williams	L pg 581
<b>Other Business</b> Update on 9VAC15-60 in response to HB206	Rolband	
Report to the Board Regarding Controversial Permits <ul style="list-style-type: none"> <li>• Prince Edward County Virginia Water Protection (VWP) No. 21-1912, Sandy River Reservoir</li> </ul>	Morris	

Agenda Item	Presenter	Tab
<ul style="list-style-type: none"> <li>• AdvanSix Resins and Chemicals LLC - Hopewell Virginia; Virginia Pollutant Discharge Elimination System Permit - VA0005291</li> </ul>		
<p>Mountain Valley Pipeline – Update  Future Meeting date- to be determined  Public Forum (<i>time not to exceed 45 minutes- no comment on agenda items or pending regulatory actions during public forum</i>)</p>	<p>Davenport  Porterfield</p>	

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**ADJOURN**

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Melissa S. Porterfield at (804) 698-4238.

**PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions made by the Department of Environmental Quality (Department). These procedures establish the times for the public to provide appropriate comment to the Board for regulatory action and the Department for case decisions for consideration.

For **REGULATORY ACTIONS** (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS** (e.g., issuance and amendment of permits and enforcement orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. (Note: as of July 1, 2022, the Department takes final action on all case decisions.) As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held, usually 45 days.

In light of these established procedures, the Board accepts public comment on regulatory actions as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Also, public comment will be accepted for certain final exempt actions where there has been no public comment period. Persons are allowed up to 3 minutes to address the Board on the emergency regulation and final exempt actions under consideration.

**POOLING MINUTES ON REGULATORY ACTIONS:** Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

**NEW INFORMATION ON A REGULATORY ACTION** will not be accepted at the meeting. The Board expects comments and information on a regulatory action to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. Should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda or pending regulatory actions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less. Note, there is no pooling of minutes during the public forum.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Melissa S. Porterfield, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4238, e-mail: [Melissa.porterfield@deq.virginia.gov](mailto:Melissa.porterfield@deq.virginia.gov)

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**Additional Meeting Information:**

- Attendees may not erect any signage inside or outside the meeting room or building.
- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the complex, its employees and guests.
- Attendees wishing to record the proceedings are welcome to do so; however, you may not interfere with the business of the meeting, nor impede the view or participation of other meeting attendees and staff.
- No smoking is allowed unless in a designated outside space. This includes tobacco & e-cigarettes.
- No alcohol, fireworks, pyrotechnics, weapons, or any substances/items controlled by law are allowed.

- No firearms are allowed in the State's contracted spaces except for firearms carried by law-enforcement officers or authorized security personnel.
- All violators may be subject to removal from the meeting facility.
- Anyone removed from the facility may not reenter.
- Anyone who fails to comply with removal may be charged with trespass.

**TAB A**



*Commonwealth of Virginia*

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

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Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

**MEMORANDUM**

To: Members of the State Water Control Board

From : Melissa S. Porterfield *MSP*

Date: May 15, 2024

Subject: Minutes

Attached are the minutes from your meeting on February 23, 2024. Staff will seek your approval of the minutes at your next meeting.

If you have any questions, please contact me at (804) 698-4238 or [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.virginia.gov).



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## **STATE WATER CONTROL BOARD MEETING**

**GALLERY, COMMUNITY COLLEGE WORKFORCE ALLIANCE,  
1651 EAST PARHAM ROAD, RICHMOND, VA 23228**

**FRIDAY FEBRUARY 23, 2024**

### **Board Members Present:**

Lou Ann Jessee-Wallace, Chair  
Scott Cameron  
Robert Dunn  
Michelle Johnson  
Reece Robertson  
Ryan Seiger

### **Board Members Absent:**

Jerry Kilgore

### **Department of Environmental Quality:**

Michael Rolband, Director  
Melissa Porterfield  
Rachael Harrell

### **Office of the Attorney General:**

Ross Phillips

1. The attached minutes summarize activities that took place at this Board Meeting.
2. The meeting convened 10:04 a.m. and adjourned at 11:20 a.m.



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
AT ITS MEETING ON FEBRUARY 23, 2024**

**Minute No. 1- Minutes**

The Board approved the minutes of the meeting held November 30, 2023 by a vote of (6-0).

A handwritten signature in blue ink, appearing to read "Melissa S. Porterfield".

Melissa S. Porterfield



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT ITS MEETING ON FEBRUARY 23, 2024**

**MINUTE NO. 2 – General VPDES Permit for Discharges of Stormwater from Construction Activities (9VAC25-880)**

Prior to the meeting, the Board was provided materials including a briefing memo outlining the regulatory process and changes to the existing regulation, the regulation showing final amendments, the town hall agency background document, and the Office of Regulatory Management Economic Review Form.

Rebecca Rochet, Deputy Director of the Division of Water Permitting, Central Office, presented a summary of the comments received during the public comment period, DEQ responses, and the significant final changes to the regulation.

Mr. David Sligh and Mr. Partick Fanning addressed the Board to respond to the response they received from DEQ to their comments submitted on the proposed regulation.

An errata sheet for final minor amendments and corrections was provided to the Board at the meeting.

Board member Michelle Johnson submitted to DEQ staff a signed transactional disclosure statement pursuant to the Virginia State and Local Government Conflict of Interests Act before participating in/voting on this agenda item. Ms. Johnson stated she has a personal interest affected by the transaction being considered because of her employment as County Administrator of Charles City County. Charles City County, like other Virginia localities, has projects covered by the Construction General Permit and administers a Virginia Stormwater Management Program. She stated she is able to participate in the transaction fairly, objectively, and in the public interest.

**Board Decision**

Based on the staff presentation and recommendation, and an errata sheet provided to the board during the presentation, the Board voted unanimously (6-0) to adopt the General VPDES Permit for Discharges from Construction Activities (9VAC25-880) as final regulations and affirm that it

will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act.

A handwritten signature in blue ink that reads "Rebecca Rochet". The signature is fluid and cursive.

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**Rebecca Rochet**  
**Deputy Director, Water Permitting Division**



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
AT ITS MEETING ON FEBRUARY 23, 2024**

**Minute No. 3 - Report to the Board Regarding Controversial Permits- Prince Edward  
County Virginia Water Protection (VWP) No. 21-1912, Sandy River Reservoir**

In accordance with § 10.1-1184.1.B of the Code of Virginia, Dr. Scott Morris provided the Controversial Permit Report to the Board. The report included the permit number, actions taken prior to the board meeting, location of the facility and outfall, summary of comments received, and the schedule for the final actions to be taken by the Department. The Board was provided the opportunity to respond to the Department's presentation and provide commentary regarding the permit. Mr. Cameron asked if Nottoway County's Board of Supervisors had expressed their view on the permit, and Dr. Morris responded that there was general opposition from Nottoway County concerning this permit.

A handwritten signature in blue ink, appearing to read 'Scott Morris'.

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**Scott Morris**  
**Director, Water Division**



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
AT ITS MEETING ON FEBRUARY 23, 2024**

**Minute No. 4- Future Meeting Date**

The Board confirmed their next meeting date as June 25, 2024.

  
Melissa S. Porterfield



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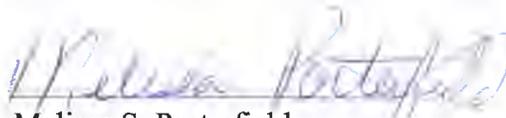
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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
AT ITS MEETING ON FEBRUARY 23, 2024**

**Minute No. 5- Public Forum**

The following individuals expressed their concerns with the Mountain Valley Pipeline project during the public forum: David Sligh; Russell Chisholm; Amy Nelson; Crystal Mello; Joshua Vana; and Jessica Sims. Ms. Wallace requested the Department of Environmental Quality provide the Board with an update on the Mountain Valley Pipeline.

  
Melissa S. Porterfield

**TAB B**



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Director  
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**MEMORANDUM**

TO: State Water Control Board Members

FROM: Scott Morris, Water Division Director

A handwritten signature in blue ink, appearing to read 'Scott Morris'.

DATE: May 31, 2024

SUBJECT: Final Exempt Action: Amendment to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) in response to Chapters 5 and 104 of the 2024 Virginia Acts of Assembly (Del. Wiley, HB 656 and Sen. DeSteph, SB 365)

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At the June 25, 2024, meeting of the State Water Control Board, the Department will present the Board with final amendments to the Virginia Erosion and Stormwater Management Regulation. These amendments are necessary to implement Chapters 5 and 104 of the 2024 Acts of Assembly.

Chapters 5 and 104 of the 2024 Virginia Acts of Assembly (Del. Wiley, HB 656 and Sen. DeSteph, SB 365) revise state law to fix a “Catch-22” in the law which, if unresolved, could stop land-disturbing projects in certain localities on and after July 1, 2024. The “Catch-22” that these bills fix arises because one provision of the 2016 Stormwater and Erosion and Sediment Control Consolidation Bill, Chapters 68 and 758 of the 2016 Acts of Assembly, states that a locality that does not operate a Virginia Stormwater Management Program cannot approve erosion and sediment control plans for a project until DEQ has issued stormwater permit coverage for the project. However, another provision in this law states that DEQ cannot issue stormwater permit coverage for a project until the locality has approved the erosion and sediment control plans for the project. These bills fix the “Catch-22” by setting up a sequence where the locality will review and approve erosion and sediment control plans, and then obtain evidence of stormwater permit coverage before issuing its land disturbance approval.

The Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) will be updated to be consistent with the change to state law. These regulatory amendments are exempt from

the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia). A copy of Chapters 5 and 104 of the 2024 Virginia Acts of Assembly is attached to this memorandum. The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

After making a presentation on the proposed amendments and answering any questions the Board may have, staff will ask the Board for final approval of amendments to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

### **ATTACHMENTS**

- TH09- Exempt Action Final Regulation Agency Background Document for the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.)
- Project 7901- Final Exempt Action: Amendment to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) in response to Chapters 5 and 104 of the 2024 Virginia Acts of Assembly
- Chapters 5 and 104 of the 2024 Acts of Assembly

### **PRESENTER CONTACT INFORMATION**

**Name:** Scott Morris, Water Division Director

**Phone:** (804) 659-1383

**Email:** anthony.morris@deq.virginia.gov



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-875
<b>VAC Chapter title(s)</b>	Virginia Erosion and Stormwater Management Regulation
<b>Action title</b>	Amendment to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) in response to Chapters 5 and 104 of the 2024 Virginia Acts of Assembly
<b>Final agency action date</b>	June 25, 2024
<b>Date this document prepared</b>	May 17, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

Chapters 5 and 104 of the 2024 Virginia Acts of Assembly (Del. Wiley, HB 656 and Sen. DeSteph, SB 365) revise state law to fix a "Catch-22" in the law which, if unresolved, could stop land-disturbing projects in certain localities on and after July 1, 2024. The "Catch-22" that these bills fix arises because one provision of the 2016 Stormwater and Erosion and Sediment Control Consolidation Bill, Chapters 68 and 758 of the 2016 Acts of Assembly, states that a locality that does not operate a Virginia Stormwater Management Program cannot approve erosion and sediment control plans for a project until DEQ has issued stormwater permit coverage for the project. However, another provision in this law states that DEQ cannot issue stormwater permit coverage for a project until the locality has approved the erosion and sediment control plans for the project. These bills fix the "Catch-22" by setting up a sequence where the

locality will review and approve erosion and sediment control plans, and then obtain evidence of stormwater permit coverage before issuing its land disturbance approval.

The Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) will be updated to be consistent with the change to state law.

### **Mandate and Impetus**

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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The Governor signed SB365 (Chapter 5 of the 2024 Acts of Assembly) and HB656 (Chapter 104 of the 2024 Acts of Assembly) into law and these changes will become effective July 1, 2024. The Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) will be updated to be consistent with the change to state law.

This regulatory action is required to conform the existing regulation to changes in state law. Section 2.2-4006 A 4 a of the Code of Virginia, excludes regulations that are necessary to conform to changes in Virginia statutory law or the Appropriation Act where no agency discretion is involved from the requirements of the Administrative Process Act.

### **Statement of Final Agency Action**

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On June 25, 2024, the State Water Control Board approved final amendments to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

For consideration at the June 25, 2024 State Water Control Board meeting- Final exempt action to amend the Virginia Erosion and Stormwater Management Regulation (9VAC25-875)

1 **9VAC25-875-300. Plan review requirements.**

2 A. The VESCP authority shall review erosion and sediment control plans that detail the criteria,  
3 techniques, and methods as defined in 9VAC25-875-550 for land-disturbing activities described  
4 in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-  
5 280.

6 B. When determined that the plan meets the minimum criteria, techniques, and methods as  
7 defined in 9VAC25-875-550, the VESCP authority shall review erosion and sediment control plans  
8 submitted and grant written approval within 60 days of the receipt of the plan.

9 C. When the VESCP authority determines a plan is inadequate, written notice stating the  
10 specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice  
11 shall specify the modifications, terms, and conditions that are necessary for approval of the plan.  
12 If no action is taken by the VESCP authority within 45 days, the plan shall be deemed approved  
13 and the proposed activity authorized. The VESCP authority shall act on any erosion and sediment  
14 control plan that has been previously deemed inadequate within 45 days after receipt of a revised  
15 plan if deemed adequate.

16 D. For sites requiring coverage under the General VPDES Permit for Discharges of  
17 Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such  
18 permit coverage from the department's online reporting system prior to approving the erosion and  
19 sediment control plan issuing its land-disturbance approval.

20 E. The person responsible for carrying out the plan shall provide the name of an individual  
21 holding a certificate to the VESCP authority who will be in charge of and responsible for carrying  
22 out the land-disturbing activity. However, the VESCP authority may waive the Responsible Land  
23 Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-  
24 44.15:55 of the Code of Virginia.

25 F. The VESCP authority may require approval of an erosion and sediment control plan for any  
26 land identified as an erosion impact area in accordance with § 62.1-44.15:55 of the Code of  
27 Virginia.

28 G. All erosion and sediment control structures and systems shall be maintained, inspected,  
29 and repaired as needed to ensure continued performance of their intended function. A statement  
30 describing the maintenance responsibilities of the individual responsible for carrying out the land-  
31 disturbing activity shall be included in the approved erosion and sediment control plan.

32  
33  
34 Statutory Authority

35 §§ 62.1-44.15:28 and 62.1-44.15:55 of the Code of Virginia

# VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

## CHAPTER 5

*An Act to amend and reenact § 62.1-44.15:55, as it shall become effective, of the Code of Virginia, relating to regulated land-disturbing activities; submission and approval of erosion and sediment control plan.*

[S 365]

Approved March 8, 2024

**Be it enacted by the General Assembly of Virginia:**

**1. That § 62.1-44.15:55, as it shall become effective, of the Code of Virginia is amended and reenacted as follows:**

**§ 62.1-44.15:55. (Effective July 1, 2024) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.**

A. Except as provided in § 62.1-44.15:31 for a land-disturbing activity conducted by a state agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until (i) he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. ~~Where~~ and (ii) where Virginia Pollutant Discharge Elimination System permit coverage is required, ~~a the VESCP authority shall be required to obtain~~ *has obtained* evidence of such permit coverage from the Department's online reporting system prior to ~~approving the erosion and sediment control plan~~ *issuing its land-disturbance approval*. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction. Where the land-disturbing activity results from the construction of a (i) ~~(a)~~ single-family residence or (ii) ~~(b)~~ farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

C. The VESCP authority may require changes to an approved plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article and associated regulations, are agreed to by the VESCP authority and the person responsible for carrying out the plan.

D. In order to prevent further erosion, a VESCP authority may require approval of an erosion and sediment control plan for any land identified by the VESCP authority as an erosion impact area.

E. For the purposes of subsections A and B, when land-disturbing activity will be required of a

contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;

3. Installation, maintenance, or repair of any individual service connection;

4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;

7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

# VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

## CHAPTER 104

*An Act to amend and reenact § 62.1-44.15:55, as it shall become effective, of the Code of Virginia, relating to regulated land-disturbing activities; submission and approval of erosion and sediment control plan.*

[H 656]

Approved March 20, 2024

**Be it enacted by the General Assembly of Virginia:**

**1. That § 62.1-44.15:55, as it shall become effective, of the Code of Virginia is amended and reenacted as follows:**

**§ 62.1-44.15:55. (Effective July 1, 2024) Regulated land-disturbing activities; submission and approval of erosion and sediment control plan.**

A. Except as provided in § 62.1-44.15:31 for a land-disturbing activity conducted by a state agency, federal entity, or other specified entity, no person shall engage in any land-disturbing activity until (i) he has submitted to the VESCP authority an erosion and sediment control plan for the land-disturbing activity and the plan has been reviewed and approved. ~~Where~~ *and* (ii) *where* Virginia Pollutant Discharge Elimination System permit coverage is required, ~~a the VESCP authority shall be required to obtain~~ *has obtained* evidence of such *permit* coverage from the Department's online reporting system prior to ~~approving the erosion and sediment control plan~~ *issuing its land-disturbance approval*. A VESCP authority may enter into an agreement with an adjacent VESCP or VESMP authority regarding the administration of multijurisdictional projects specifying who shall be responsible for all or part of the administrative procedures. Should adjacent authorities fail to come to such an agreement, each shall be responsible for administering the area of the multijurisdictional project that lies within its jurisdiction. Where the land-disturbing activity results from the construction of a ~~(i)~~ *(a)* single-family residence or ~~(ii)~~ *(b)* farm building or structure on a parcel of land with a total impervious cover percentage, including the impervious cover from the farm building or structure to be constructed, of less than five percent, an agreement in lieu of a plan may be substituted for an erosion and sediment control plan if executed by the VESCP authority.

B. The VESCP authority shall review erosion and sediment control plans submitted to it and grant written approval within 60 days of the receipt of the plan if it determines that the plan meets the requirements of this article and the Board's regulations and if the person responsible for carrying out the plan certifies that he will properly perform the erosion and sediment control measures included in the plan and shall comply with the provisions of this article. In addition, as a prerequisite to engaging in the land-disturbing activities shown on the approved plan, the person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority, as provided by § 62.1-44.15:52, who will be in charge of and responsible for carrying out the land-disturbing activity. However, any VESCP authority may waive the certificate requirement for an agreement in lieu of a plan. If a violation occurs during the land-disturbing activity, then the person responsible for carrying out the agreement in lieu of a plan shall correct the violation and provide the name of an individual holding a certificate, as provided by § 62.1-44.15:52. Failure to provide the name of an individual holding a certificate prior to engaging in land-disturbing activities may result in revocation of the approval of the plan and the person responsible for carrying out the plan shall be subject to the penalties provided in this article.

When a plan is determined to be inadequate, written notice of disapproval stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that will permit approval of the plan. If no action is taken by the VESCP authority within the time specified in this subsection, the plan shall be deemed approved and the person authorized to proceed with the proposed activity. The VESCP authority shall act on any erosion and sediment control plan that has been previously disapproved within 45 days after the plan has been revised, resubmitted for approval, and deemed adequate.

C. The VESCP authority may require changes to an approved plan in the following cases:

1. Where inspection has revealed that the plan is inadequate to satisfy applicable regulations; or
2. Where the person responsible for carrying out the approved plan finds that because of changed circumstances or for other reasons the approved plan cannot be effectively carried out, and proposed amendments to the plan, consistent with the requirements of this article and associated regulations, are agreed to by the VESCP authority and the person responsible for carrying out the plan.

D. In order to prevent further erosion, a VESCP authority may require approval of an erosion and sediment control plan for any land identified by the VESCP authority as an erosion impact area.

E. For the purposes of subsections A and B, when land-disturbing activity will be required of a

contractor performing construction work pursuant to a construction contract, the preparation, submission, and approval of an erosion and sediment control plan shall be the responsibility of the owner.

F. Notwithstanding any other provisions of this article, the following activities are not required to comply with the requirements of this article unless otherwise required by federal law:

1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq.). However, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;

2. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;

3. Installation, maintenance, or repair of any individual service connection;

4. Installation, maintenance, or repair of any underground utility line when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

5. Installation, maintenance, or repair of any septic tank line or drainage field unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;

6. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.2;

7. Clearing of lands specifically for bona fide agricultural purposes; the management, tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot operations; agricultural engineering operations, including construction of terraces, terrace outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally set forth by the Board in regulations. However, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of § 10.1-1163;

8. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;

9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESMP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of subsection A is required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-875
<b>VAC Chapter title(s)</b>	Virginia Erosion and Stormwater Management Regulation
<b>Action title</b>	Amendments to the Virginia Erosion and Stormwater Management Regulation (9VAC25-875 et seq.) in Response to Chapters 5 and 104 of the 2024 Virginia Acts of Assembly
<b>Date this document prepared</b>	May 17, 2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Final Exempt

**Cost Benefit Analysis**

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

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

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

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Background:</b> Chapters 5 and 104 of the 2024 Virginia Acts of Assembly (Del. Wiley, HB 656 and Sen. DeSteph, SB 365) revised state law to fix a “Catch-22” in the law which, if unresolved, would have stopped land-disturbing projects in certain localities on and after July 1, 2024. The “Catch-22” that these bills fixed arose because one provision of the 2016 Stormwater and Erosion and Sediment Control Consolidation Bill, Chapters 68 and 758 of the 2016 Acts of Assembly, stated that a locality that did not</p>
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	<p>operate a Virginia Stormwater Management Program could not approve erosion and sediment control plans for a project until DEQ had issued stormwater permit coverage for the project. However, another provision in this law stated that DEQ could not issue stormwater permit coverage for a project until the locality had approved the erosion and sediment control plans for the project. These bills fixed the “Catch-22” by setting up a sequence where the locality will review and approve erosion and sediment control plans, and obtain evidence of stormwater permit coverage before issuing its land disturbance approval. This rulemaking updates the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875 et seq.) to be consistent with the change to state law.</p> <p><b>Direct costs:</b> There are no direct costs associated with this change in the law and resulting regulation.</p> <p><b>Indirect Costs:</b> There are no indirect costs associated with this change in the law and resulting regulation.</p> <p><b>Direct Benefits:</b> This change in the law and resulting regulation resolve a “Catch-22” that would have stopped economic development projects in the approximately 150 localities that are required to operate an erosion and sediment control program (Virginia Erosion and Sediment Control Program (VESCP) authorities) but are not required by the Code of Virginia to operate their own stormwater management program. In 2022, DEQ issued 141 Virginia Pollutant Discharge Elimination System (VPDES) permits for land-disturbing activity in localities that only have an erosion and sediment control program. DEQ issued 136 VPDES permits in the 2023. If the regulation is not changed to be consistent with the law, as amended, a comparable number of permits and associated development projects could be delayed or stopped because of the “Catch-22” problem. By resolving this “Catch-22” there is an indeterminate direct benefit equivalent to value of enabling the economic development projects that otherwise would have been caught in this “Catch-22” to proceed.</p> <p><b>Indirect Benefits:</b> By allowing the economic development projects described above to proceed this change will have positive benefits in multiple economic sectors, including construction, the engineering and design community, and real estate sectors. This regulatory change eliminates confusion and provides clarity to both local VESCP authorities and the regulated community.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) Indeterminate direct and indirect benefits by allowing economic development projects to proceed in the approximately 150 localities that operate VESCP authorities.
(3) Net Monetized Benefit	Indeterminate but clearly positive.	
(4) Other Costs & Benefits (Non-Monetized)	Aligning the regulation with the change in the law will provide clarity and reduce regulatory uncertainty.	
(5) Information Sources	Fiscal impact statements for Chapters 5 and 104 of the 2024 Virginia Acts of Assembly.	

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Background:</b> These regulatory amendments are in response to changes to state law where no agency discretion is involved. Retaining the status quo is not an option.</p> <p><b>Direct Costs:</b> In 2022, DEQ issued 141 VPDES permits for land-disturbing activity in localities that only have an erosion and sediment control program. DEQ issued 136 VPDES permits in the 2023. If the regulation is not changed to be consistent with the law, as amended, a comparable number of permits and associated development projects could be delayed or stopped because of the “Catch-22” problem.</p> <p><b>Indirect Costs:</b> Indirect costs of economic development projects becoming caught in the “Catch-22” describe above could include economic losses to the construction, engineering and design, and real estate sectors. In addition to potentially delaying or stopping construction activities that result in land-disturbing activities of one acre or more in localities that only administer erosion and sediment control programs, indirect costs of maintaining the status quo could involve administrative confusion because of conflicting requirements and project delays.</p> <p><b>Direct Benefits:</b></p>
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	<p>There is no direct benefit to the agency or the regulated community with retaining the regulation as currently written. When requirements of law and regulation conflict, the requirements of the law prevail.</p> <p><b>Indirect Benefits:</b> There is no indirect benefit to the agency or the regulated community with retaining the regulation as currently written.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Indeterminate but potentially significant.	(b) None.
(3) Net Monetized Benefit	Indeterminate but clearly negative.	
(4) Other Costs & Benefits (Non-Monetized)	Retaining the regulation as is would result in regulatory confusion as a result of the regulation being inconsistent with state law.	
(5) Information Sources	Fiscal impact statements for Chapters 5 and 104 of the 2024 Virginia Acts of Assembly.	

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>The regulatory change that results from amendments to § 62.1-44.15:55 of the Code of Virginia by Chapters 5 and 104 of the 2024 Acts of Assembly is necessary to conform to changes in Virginia statutory law where no agency discretion is involved. Because of the change in Virginia law, there are not alternative approaches.</p> <p><b>Direct Costs:</b> N/A</p> <p><b>Indirect Costs:</b> N/A</p> <p><b>Direct Benefits:</b> N/A</p> <p><b>Indirect Benefits:</b> N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits

	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p><b>Direct Costs:</b> The amendments to the VESM Regulation do not impose any cost on localities that only implement erosion and sediment control programs (i.e., VESCP authorities) because they will continue to do the same plan review and approval they are currently required to perform – without adding or removing a step or procedure.</p> <p><b>Indirect Costs:</b> N/A</p> <p><b>Direct Benefits:</b> Localities that serve as VESCP authorities will benefit from being able to approve land-disturbing activities that also require VPDES permit coverage because approval of the erosion and sediment control plan will no longer be dependent on issuance of the VPDES permit, eliminating the “Catch-22” that exists in the law in its current form.</p> <p><b>Indirect Benefits:</b> A “Catch-22” in the law will not delay construction activity in the approximately 150 localities where they are the VESCP authority and DEQ is the stormwater management plan authority.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct &amp; Indirect Costs</p>	<p>Direct &amp; Indirect Benefits</p>

	(a) See table 1a.	(b) See table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See table 1a.	
(4) Assistance	None	
(5) Information Sources	See table 1a.	

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: The amendment to the VESM Regulation does not have any impact on families because it is limited to a procedural change that VESCP authorities will implement when approving land-disturbing activities.</p> <p>Indirect Costs: N/A</p> <p>Direct Benefits: N/A</p> <p>Indirect Benefits: N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	

(4) Information Sources	N/A
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**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> The amendment to the VESM Regulation does not have any direct costs on small businesses because it is limited to a procedural change that VESCP authorities will implement when approving land-disturbing activities.</p> <p><b>Indirect Costs:</b> None.</p> <p><b>Direct Benefits:</b> This change in the law and regulation has indeterminate benefits for small businesses that otherwise would have been caught in the “Catch-22” described in table 1a.</p> <p><b>Indirect Benefits:</b> This change in the law and regulation has indeterminate benefits for small businesses that otherwise would have been caught in the “Catch-22” described in table 1a.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) See table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See table 1a.	
(4) Alternatives	N/A	
(5) Information Sources	See table 1a.	

**Changes to Number of Regulatory Requirements**

**Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

*Change in Regulatory Requirements*

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-875-300	(M/A):	8	0	0	0
	(D/A):	0	0	0	0
	(M/R):	2	0	0	0
	(D/R):	0	0	0	0
<b>Grand Total of Changes in Requirements:</b>					(M/A): 0 (D/A): 0 (M/R): 0 (D/R): 0

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Cost Reductions or Increases (if applicable)*

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
N/A				

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
N/A		

*Length of Guidance Documents (only applicable if guidance document is being revised)*

<b>Title of Guidance Document</b>	<b>Original Word Count</b>	<b>New Word Count</b>	<b>Net Change in Word Count</b>
N/A			

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

**TAB C**



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

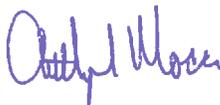
(800) 592-5482

[www.deq.virginia.gov](http://www.deq.virginia.gov)

Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members  
FROM: Scott Morris, Water Division Director   
DATE: May 29, 2024  
SUBJECT: Final Exempt Action: Amendments to licensed operator requirements in response to Chapter 178 of the 2024 Virginia Acts of (HB220, Del. Orrock)

At the June 25, 2024, meeting of the State Water Control Board, the Department will present the Board with final amendments to the VPDES Permit Regulation (9VAC25-31 et seq.); VPA Permit Regulation (9VAC25-32 et seq.); and Sewage Collection and Treatment Regulations (9VAC25-790 et seq.). These amendments are necessary to implement Chapter 178 of the 2024 Acts of Assembly.

Chapter 178 of the 2024 Acts of Assembly (HB 220, Del. Orrock) revises state law to require the owner of every waterworks or treatment facility identified as a classified waterworks to employ or contract an operator who holds a current waterworks operator license. This requirement is not within the State Water Control Board or Department of Environmental Quality's authority. However, Chapter 178 also requires every sewage treatment works owner to employ or contract an operator who holds a current wastewater operator license. The VPDES Permit Regulation (9VAC25-31 et seq.); VPA Permit Regulation (9VAC25-32 et seq.); and Sewage Collection and Treatment Regulations (9VAC25-790 et seq.) will be updated to be consistent with the change to state law for sewage treatment works owners. These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia). A copy of Chapter 178 of the 2024 Virginia Acts of Assembly is attached to this memorandum. The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

After making a presentation on the proposed amendments and answering any questions the Board may have, staff will ask the Board for final approval of amendments to the VPDES Permit Regulation (9VAC25-31 et seq.); VPA Permit Regulation (9VAC25-32 et seq.); and Sewage Collection and Treatment Regulations (9VAC25-790 et seq.) and affirm that the Board will receive,

consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**ATTACHMENTS**

- TH09 - Exempt Action Final Regulation Agency Background Document - Amendments to licensed operator requirements in response to Chapter 178 of the 2024 Virginia Acts of Assembly
- Project 7894- Final Exempt Action: Amendments to licensed operator requirements in response to Chapter 178 of the 2024 Virginia Acts of Assembly
- Chapter 178 of the 2024 Acts of Assembly

**PRESENTER CONTACT INFORMATION**

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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-31 9VAC25-32 9VAC25-790
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation; Virginia Pollution Abatement (VPA) Permit Regulation; Sewage Collection and Treatment Regulations
<b>Action title</b>	Amendments to licensed operator requirements in response to Chapter 178 of the 2024 Virginia Acts of Assembly
<b>Final agency action date</b>	June 25, 2024
<b>Date this document prepared</b>	May 31, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This final exempt regulatory action is necessary to implement Chapter 178 of the 2024 Acts of Assembly, which requires sewage treatment works, classified waterworks, and classified water treatment facilities to employ a licensed operator. This action will amend the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.); the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-et seq.); and the Sewage Collection and Treatment Regulations (9VAC25-790 et seq.), to include this new statutory requirement.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

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HB220 was passed during the 2024 Session of the General Assembly. The bill requires sewage treatment works, classified waterworks, and classified water treatment facilities to employ a licensed operator. The bill establishes a protocol for responding to an unexpected vacancy of the licensed operator position. The bill also permits remote monitoring of the facility by the licensed operator upon a demonstration of sufficient technology for the remote operator to adequately monitor the waterworks or treatment facility and manage onsite operators. This final exempt action is only applicable to sewage treatment works. Classified waterworks and classified water treatment facilities are subject to regulation by the State Board of Health.

The Governor signed the bill into law (HB220 – Chapter 178 of the 2024 Acts of Assembly) and these changes will become effective July 1, 2024. This regulatory action is required to conform the existing regulation to changes in Code. Section 2.2-4006 A 4 a of the Code of Virginia, excludes regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved from the requirements of the Administrative Process Act.

## Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On June 25, 2024, the State Water Control Board approved final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.); Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-et seq.); and Sewage Collection and Treatment Regulations (9VAC25-790 et seq.) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 Project 7894 - Final Exempt Action: Amendment to the VPDES Permit Regulation (9VAC25-31  
2 et seq.); VPA Permit Regulation (9VAC25-32 et seq.); and Sewage Collection and Treatment  
3 Regulations (9VAC25-790 et seq.) in response to Chapter 178 of the 2024 Virginia Acts of  
4 Assembly for State Water Control Board June 25, 2024 meeting

5  
6 **9VAC25-31-200. Additional conditions applicable to specified categories of VPDES**  
7 **permits.**

8 The following conditions, in addition to those set forth in 9VAC25-31-190, apply to all VPDES  
9 permits within the categories specified below:

10 A. Existing manufacturing, commercial, mining, and silvicultural dischargers. All existing  
11 manufacturing, commercial, mining, and silvicultural dischargers must notify the department as  
12 soon as they know or have reason to believe:

13 1. That any activity has occurred or will occur which would result in the discharge, on a  
14 routine or frequent basis, of any toxic pollutant that is not limited in the permit, if that  
15 discharge will exceed the highest of the following notification levels:

16 a. One hundred micrograms per liter (100 µg/l);

17 b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five  
18 hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-  
19 dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

20 c. Five times the maximum concentration value reported for that pollutant in the permit  
21 application; or

22 d. The level established by the department in accordance with 9VAC25-31-220 F.

23 2. That any activity has occurred or will occur which would result in any discharge, on a  
24 nonroutine or infrequent basis, of a toxic pollutant that is not limited in the permit, if that  
25 discharge will exceed the highest of the following notification levels:

26 a. Five hundred micrograms per liter (500 µg/l);

27 b. One milligram per liter (1 mg/l) for antimony;

28 c. Ten times the maximum concentration value reported for that pollutant in the permit  
29 application; or

30 d. The level established by the department in accordance with 9VAC25-31-220 F.

31 B. Publicly and privately owned treatment works. All POTWs and PVOTWs must provide  
32 adequate notice to the department of the following:

33 1. Any new introduction of pollutants into the POTW or PVOTW from an indirect discharger  
34 that would be subject to § 301 or 306 of the CWA and the law if it were directly discharging  
35 those pollutants; and

36 2. Any substantial change in the volume or character of pollutants being introduced into  
37 that POTW or PVOTW by a source introducing pollutants into the POTW or PVOTW at  
38 the time of issuance of the permit.

39 3. For purposes of this subsection, adequate notice shall include information on (i) the  
40 quality and quantity of effluent introduced into the POTW or PVOTW, and (ii) any  
41 anticipated impact of the change on the quantity or quality of effluent to be discharged  
42 from the POTW or PVOTW.

43 4. When the monthly average flow influent to a POTW or PVOTW reaches 95% of the  
44 design capacity authorized by the VPDES permit for each month of any three-month

45 period, the owner shall within 30 days notify the department in writing and within 90 days  
46 submit a plan of action for ensuring continued compliance with the terms of the permit.

47 a. The plan shall include the necessary steps and a prompt schedule of  
48 implementation for controlling any current problem, or any problem which could be  
49 reasonably anticipated, resulting from high influent flows.

50 b. Upon receipt of the owner's plan of action, the department shall notify the owner  
51 whether the plan is approved or disapproved. If the plan is disapproved, such  
52 notification shall state the reasons and specify the actions necessary to obtain  
53 approval of the plan.

54 c. Failure to timely submit an adequate plan shall be deemed a violation of the permit.

55 d. Nothing herein shall in any way impair the authority of the department to take  
56 enforcement action under § 62.1-44.15, 62.1-44.23, or 62.1-44.32 of the Code of  
57 Virginia.

58 C. Wastewater works operator requirements.

59 1. The permittee shall employ or contract at least one wastewater works operator who  
60 holds a current wastewater license appropriate for the permitted facility. The license shall  
61 be issued in accordance with Title 54.1 of the Code of Virginia and Waterworks and  
62 Wastewater Works Operators Licensing Regulations (18VAC160-30). Notwithstanding the  
63 foregoing requirement, unless the discharge is determined by the department on a case-  
64 by-case basis to be a potential contributor of pollution, no licensed operator is required for  
65 wastewater treatment works:

66 a. That have a design hydraulic capacity equal to or less than 0.04 mgd;

67 b. That discharge industrial waste or other waste from coal mining operations; or

68 c. That do not utilize biological or physical/chemical treatment.

69 2. In making this case-by-case determination, the department shall consider the location  
70 of the discharge with respect to state waters, the size of the discharge, the quantity and  
71 nature of pollutants reaching state waters and the treatment methods used at the  
72 wastewater works.

73 3. The permittee shall notify the department in writing whenever he is not complying, or  
74 has grounds for anticipating he will not comply with the requirements of subdivision 1 of  
75 this subsection. The notification shall include a statement of reasons and a prompt  
76 schedule for achieving compliance.

77 4. Every sewage treatment works owner shall employ or contract an operator who holds  
78 a current wastewater operator license, issued in accordance with Chapter 23 (§ 54.1-2300  
79 et seq.) of Title 54.1, of the appropriate class for the type of facility, as determined by the  
80 department, or higher class at the owner's option. If the position of the licensed operator  
81 of the appropriate class is unexpectedly vacated due to death, extended illness, firing for  
82 cause, resignation, or similar cause, the treatment works owner shall notify the department  
83 promptly and in accordance with any specific timeframe directed by the department. The  
84 department shall temporarily waive the licensed operator requirement for the interim,  
85 provided the owner (i) informs the department in writing of its designation of another  
86 licensed operator or professional engineer responsible for interim operations within five  
87 days of the vacancy, (ii) informs the department in writing within 10 days of the vacancy  
88 arising of its plan to hire a replacement licensed operator of the appropriate class as soon  
89 as practicable, (iii) implements the hiring plan diligently, and (iv) provides a monthly report  
90 to the department on the implementation and progress of such hiring plan. The department  
91 may revoke the temporary waiver if the department finds that continued operation

92 pursuant to the waiver presents a public health or water quality threat due to statutory,  
93 regulatory, or permit violations.

94 5. Where the facility is equipped with adequate technological capability, the department  
95 shall credit remote monitoring of the facility by a licensed operator of the appropriate class  
96 as operator attendance toward recommended licensed operator attendance hours,  
97 provided that the owner submits and the department approves a remote monitoring plan  
98 demonstrating that the facility possesses sufficient technology for the remote operator to  
99 adequately monitor the facility and manage onsite operators with a lower license class,  
100 mechanics, or other staff to operate the facility under the remote operator's direct  
101 supervision. In determining whether to approve a remote monitoring plan for multiple  
102 facilities, the department may consider the number of facilities the remote operator is  
103 monitoring simultaneously, whether the multiple facilities being monitored remotely are  
104 under common ownership, whether the remote operator is employed by the owner of the  
105 multiple facilities, and whether occasional in-person attendance is provided, among other  
106 factors. The department may cease crediting remote monitoring if the department finds  
107 that continued operation pursuant to the remote monitoring plan presents a public health  
108 or water quality threat due to statutory, regulatory, or permit violations. The department  
109 shall not credit remote monitoring by an operator without the appropriate license class  
110 who is operating the waterworks or treatment facility pursuant to a temporary waiver  
111 issued under subdivision 4 of this subsection.

112 D. Lake level contingency plans. Any VPDES permit issued for a surface water impoundment  
113 whose primary purpose is to provide cooling water to power generators shall include a lake level  
114 contingency plan to allow specific reductions in the flow required to be released when the water  
115 level above the dam drops below designated levels due to drought conditions, and such plan shall  
116 take into account and minimize any adverse effects of any release reduction requirements on  
117 downstream users. This subsection shall not apply to any such facility that addresses releases  
118 and flow requirements during drought conditions in a Virginia Water Protection Permit.

119 E. Concentrated animal feeding operations (CAFOs). The activities of the CAFO shall not  
120 contravene the Water Quality Standards, as amended and adopted by the board, or any provision  
121 of the State Water Control Law. There shall be no point source discharge of manure, litter or  
122 process wastewater to surface waters of the state except in the case of an overflow caused by a  
123 storm event greater than the 25-year, 24-hour storm. Agricultural stormwater discharges as  
124 defined in subdivision C 3 of 9VAC25-31-130 are permitted. Domestic sewage or industrial waste  
125 shall not be managed under the Virginia Pollutant Discharge Elimination System General Permit  
126 for CAFOs (9VAC25-191). Any permit issued to a CAFO shall include:

127 1. Requirements to develop, implement and comply with a nutrient management plan. At  
128 a minimum, a nutrient management plan shall include best management practices and  
129 procedures necessary to implement applicable effluent limitations and standards.  
130 Permitted CAFOs must have their nutrient management plans developed and  
131 implemented and be in compliance with the nutrient management plan as a requirement  
132 of the permit. The nutrient management plan must, to the extent applicable:

133 a. Ensure adequate storage of manure, litter, and process wastewater, including  
134 procedures to ensure proper operation and maintenance of the storage facilities;

135 b. Ensure proper management of mortalities (i.e., dead animals) to ensure that they  
136 are not disposed of in a liquid manure, stormwater, or process wastewater storage or  
137 treatment system that is not specifically designed to treat animal mortalities;

138 c. Ensure that clean water is diverted, as appropriate, from the production area;

139 d. Prevent direct contact of confined animals with surface waters of the state;

- 140 e. Ensure that chemicals and other contaminants handled on site are not disposed of  
141 in any manure, litter, process wastewater, or stormwater storage or treatment system  
142 unless specifically designed to treat such chemicals and other contaminants;
- 143 f. Identify appropriate site specific conservation practices to be implemented, including  
144 as appropriate buffers or equivalent practices, to control runoff of pollutants to surface  
145 waters of the state;
- 146 g. Identify protocols for appropriate testing of manure, litter, process wastewater and  
147 soil;
- 148 h. Establish protocols to land apply manure, litter or process wastewater in accordance  
149 with site specific nutrient management practices that ensure appropriate agricultural  
150 utilization of the nutrients in the manure, litter or process wastewater; and
- 151 i. Identify specific records that will be maintained to document the implementation and  
152 management of the minimum elements described above.
- 153 2. Recordkeeping requirements. The permittee must create, maintain for five years, and  
154 make available to the director upon request the following records:
- 155 a. All applicable records identified pursuant to subdivision 1 i of this subsection;
- 156 b. In addition, all CAFOs subject to EPA Effluent Guidelines for Feedlots (40 CFR Part  
157 412) must comply with recordkeeping requirements as specified in 40 CFR 412.37(b)  
158 and (c) and 40 CFR 412.47(b) and (c);
- 159 A copy of the CAFO's site-specific nutrient management plan must be maintained on site  
160 and made available to the director upon request.
- 161 3. Requirements relating to transfer of manure or process wastewater to other persons.  
162 Prior to transferring manure, litter or process wastewater to other persons, large CAFOs  
163 must provide the recipient of the manure, litter or process wastewater with the most current  
164 nutrient analysis. The analysis provided must be consistent with the requirements of EPA  
165 Effluent Guidelines for Feedlots (40 CFR Part 412). Large CAFOs must retain for five  
166 years records of the date, recipient name and address, and approximate amount of  
167 manure, litter, or process wastewater transferred to another person.
- 168 4. Annual reporting requirements for CAFOs. The permittee must submit an annual report  
169 to the director. As of the start date in Table 1 of 9VAC25-31-1020, all annual reports  
170 submitted in compliance with this subsection shall be submitted electronically by the  
171 permittee to the department in compliance with this subsection and 40 CFR Part 3  
172 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110, and Part XI (9VAC25-  
173 31-950 et seq.) of this chapter. Part XI of this chapter is not intended to undo existing  
174 requirements for electronic reporting. Prior to this date, and independent of Part XI of this  
175 chapter, the permittee may be required to report electronically if specified by a particular  
176 permit. The annual report must include:
- 177 a. The number and type of animals, whether in open confinement or housed under  
178 roof (beef cattle, broilers, layers, swine weighing 55 pounds or more, swine weighing  
179 less than 55 pounds, mature dairy cows, dairy heifers, veal calves, sheep and lambs,  
180 horses, ducks, turkeys, other);
- 181 b. Estimated amount of total manure, litter and process wastewater generated by the  
182 CAFO in the previous 12 months (tons/gallons);
- 183 c. Estimated amount of total manure, litter and process wastewater transferred to other  
184 persons by the CAFO in the previous 12 months (tons/gallons);
- 185 d. Total number of acres for land application covered by the nutrient management plan  
186 developed in accordance with subdivision 1 of this subsection;

187 e. Total number of acres under control of the CAFO that were used for land application  
188 of manure, litter and process wastewater in the previous 12 months;

189 f. Summary of all manure, litter, and process wastewater discharges from the  
190 production area that occurred in the previous 12 months including for each discharge  
191 the date of discovery, duration of discharge, and approximate volume;

192 g. A statement indicating whether the current version of the CAFO's nutrient  
193 management plan was developed or approved by a certified nutrient management  
194 planner; and

195 h. The actual crops planted and actual yield for each field, the actual nitrogen and  
196 phosphorus content of the manure, litter, and process wastewater, the results of  
197 calculations conducted in accordance with subdivisions 5 a (2) and 5 b (4) of this  
198 subsection, and the amount of manure, litter, and process wastewater applied to each  
199 field during the previous 12 months; and, for any CAFO that implements a nutrient  
200 management plan that addresses rates of application in accordance with subdivision  
201 5 b of this subsection, the results of any soil testing for nitrogen and phosphorus taken  
202 during the preceding 12 months, the data used in calculations conducted in  
203 accordance with subdivision 5 b (4) of this subsection, and the amount of any  
204 supplemental fertilizer applied during the previous 12 months.

205 5. Terms of the nutrient management plan. Any permit issued to a CAFO shall require  
206 compliance with the terms of the CAFO's site-specific nutrient management plan. The  
207 terms of the nutrient management plan are the information, protocols, best management  
208 practices, and other conditions in the nutrient management plan determined by the  
209 department to be necessary to meet the requirements of subdivision 1 of this subsection.  
210 The terms of the nutrient management plan, with respect to protocols for land application  
211 of manure, litter, or process wastewater required by subdivision 4 h of this subsection and,  
212 as applicable, 40 CFR 412.4(c), shall include the fields available for land application; field-  
213 specific rates of application properly developed, as specified in subdivisions 5 a and b of  
214 this subsection, to ensure appropriate agricultural utilization of the nutrients in the manure,  
215 litter, or process wastewater; and any timing limitations identified in the nutrient  
216 management plan concerning land application on the fields available for land application.  
217 The terms shall address rates of application using one of the following two approaches,  
218 unless the department specifies that only one of these approaches may be used:

219 a. Linear approach. An approach that expresses rates of application as pounds of  
220 nitrogen and phosphorus, according to the following specifications:

221 (1) The terms include maximum application rates from manure, litter, and process  
222 wastewater for each year of permit coverage, for each crop identified in the nutrient  
223 management plan, in chemical forms determined to be acceptable to the department,  
224 in pounds per acre, per year, for each field to be used for land application, and certain  
225 factors necessary to determine such rates. At a minimum, the factors that are terms  
226 shall include: the outcome of the field-specific assessment of the potential for nitrogen  
227 and phosphorus transport from each field; the crops to be planted in each field or any  
228 other uses of a field such as pasture or fallow fields; the realistic yield goal for each  
229 crop or use identified for each field; the nitrogen and phosphorus recommendations  
230 from sources specified by the department for each crop or use identified for each field;  
231 credits for all nitrogen in the field that will be plant available; consideration of multi-  
232 year phosphorus application; and accounting for all other additions of plant available  
233 nitrogen and phosphorus to the field. In addition, the terms include the form and source  
234 of manure, litter, and process wastewater to be land-applied; the timing and method  
235 of land application; and the methodology by which the nutrient management plan

236 accounts for the amount of nitrogen and phosphorus in the manure, litter, and process  
237 wastewater to be applied.

238 (2) Large CAFOs that use this approach shall calculate the maximum amount of  
239 manure, litter, and process wastewater to be land applied at least once each year  
240 using the results of the most recent representative manure, litter, and process  
241 wastewater tests for nitrogen and phosphorus taken within 12 months of the date of  
242 land application; or

243 b. Narrative rate approach. An approach that expresses rates of application as a  
244 narrative rate of application that results in the amount, in tons or gallons, of manure,  
245 litter, and process wastewater to be land applied, according to the following  
246 specifications:

247 (1) The terms include maximum amounts of nitrogen and phosphorus derived from all  
248 sources of nutrients, for each crop identified in the nutrient management plan, in  
249 chemical forms determined to be acceptable to the department, in pounds per acre,  
250 for each field, and certain factors necessary to determine such amounts. At a  
251 minimum, the factors that are terms shall include: the outcome of the field-specific  
252 assessment of the potential for nitrogen and phosphorus transport from each field; the  
253 crops to be planted in each field or any other uses such as pasture or fallow fields  
254 (including alternative crops identified in accordance with subdivision 5 b (2) of this  
255 subsection); the realistic yield goal for each crop or use identified for each field; and  
256 the nitrogen and phosphorus recommendations from sources specified by the  
257 department for each crop or use identified for each field. In addition, the terms include  
258 the methodology by which the nutrient management plan accounts for the following  
259 factors when calculating the amounts of manure, litter, and process wastewater to be  
260 land applied: results of soil tests conducted in accordance with protocols identified in  
261 the nutrient management plan, as required by subdivision 1 g of this subsection;  
262 credits for all nitrogen in the field that will be plant available; the amount of nitrogen  
263 and phosphorus in the manure, litter, and process wastewater to be applied;  
264 consideration of multi-year phosphorus application; accounting for all other additions  
265 of plant available nitrogen and phosphorus to the field; the form and source of manure,  
266 litter, and process wastewater; the timing and method of land application; and  
267 volatilization of nitrogen and mineralization of organic nitrogen.

268 (2) The terms of the nutrient management plan include alternative crops identified in  
269 the CAFO's nutrient management plan that are not in the planned crop rotation. Where  
270 a CAFO includes alternative crops in its nutrient management plan, the crops shall be  
271 listed by field, in addition to the crops identified in the planned crop rotation for that  
272 field, and the nutrient management plan shall include realistic crop yield goals and the  
273 nitrogen and phosphorus recommendations from sources specified by the department  
274 for each crop. Maximum amounts of nitrogen and phosphorus from all sources of  
275 nutrients and the amounts of manure, litter, and process wastewater to be applied  
276 shall be determined in accordance with the methodology described in subdivision 5 b  
277 (1) of this subsection.

278 (3) For CAFOs using this approach, the following projections shall be included in the  
279 nutrient management plan submitted to the department, but are not terms of the  
280 nutrient management plan: the CAFO's planned crop rotations for each field for the  
281 period of permit coverage; the projected amount of manure, litter, or process  
282 wastewater to be applied; projected credits for all nitrogen in the field that will be plant  
283 available; consideration of multi-year phosphorus application; accounting for all other  
284 additions of plant available nitrogen and phosphorus to the field; and the predicted  
285 form, source, and method of application of manure, litter, and process wastewater for

286 each crop. Timing of application for each field, insofar as it concerns the calculation of  
287 rates of application, is not a term of the nutrient management plan.

288 (4) CAFOs that use this approach shall calculate maximum amounts of manure, litter,  
289 and process wastewater to be land applied at least once each year using the  
290 methodology required in subdivision 5 b (1) of this subsection before land applying  
291 manure, litter, and process wastewater and shall rely on the following data:

292 (a) A field-specific determination of soil levels of nitrogen and phosphorus, including,  
293 for nitrogen, a concurrent determination of nitrogen that will be plant available  
294 consistent with the methodology required by subdivision 5 b (1) of this subsection, and  
295 for phosphorus, the results of the most recent soil test conducted in accordance with  
296 soil testing requirements approved by the department; and

297 (b) The results of most recent representative manure, litter, and process wastewater  
298 tests for nitrogen and phosphorus taken within 12 months of the date of land  
299 application, in order to determine the amount of nitrogen and phosphorus in the  
300 manure, litter, and process wastewater to be applied.

301 **9VAC25-32-190. Operator requirements.**

302 A. The permittee shall employ or contract at least one operator who holds a current  
303 wastewater license appropriate for the permitted facility, if required by the VPA permit. The license  
304 shall be issued in accordance with Title 54.1 of the Code of Virginia and the regulations of the  
305 Board for Waterworks and Wastewater Works Operators (18VAC160-20-10 et seq.).  
306 Notwithstanding the foregoing requirement, unless the pollutant management activity is  
307 determined by the department on a case-by-case basis to be a potential contributor of pollution,  
308 no licensed operator is required for wastewater treatment works:

- 309 1. That have a design hydraulic capacity equal to or less than 0.04 million gallons per day;  
310 2. That discharge industrial waste or other waste from coal mining operations; or  
311 3. That do not utilize biological or physical/chemical treatment.

312 B. In making this case-by-case determination, the following shall be considered:

- 313 1. The location of the pollutant management activity with respect to state waters;  
314 2. The size of the pollutant management activity;  
315 3. The quantity and nature of pollutants reaching state waters; and  
316 4. The treatment methods used at the treatment works.

317 C. The permittee shall notify the department in writing whenever he is not complying, or has  
318 grounds for anticipating he will not comply, with the requirements of subsection A of this section.  
319 The notification shall include a statement of reasons and a prompt schedule for achieving  
320 compliance.

321 D. Every sewage treatment works owner shall employ or contract an operator who holds a  
322 current wastewater operator license, issued in accordance with Chapter 23 (§ 54.1-2300 et seq.)  
323 of Title 54.1, of the appropriate class for the type of facility, as determined by the department, or  
324 higher class at the owner's option. If the position of the licensed operator of the appropriate class  
325 is unexpectedly vacated due to death, extended illness, firing for cause, resignation, or similar  
326 cause, the treatment works owner shall notify the department promptly and in accordance with  
327 any specific timeframe directed by the department. The department shall temporarily waive the  
328 licensed operator requirement for the interim, provided the owner (i) informs the department in  
329 writing of its designation of another licensed operator or professional engineer responsible for  
330 interim operations within five days of the vacancy, (ii) informs the department in writing within 10  
331 days of the vacancy arising of its plan to hire a replacement licensed operator of the appropriate  
332 class as soon as practicable, (iii) implements the hiring plan diligently, and (iv) provides a monthly

333 report to the department on the implementation and progress of such hiring plan. The department  
334 may revoke the temporary waiver if the department finds that continued operation pursuant to the  
335 waiver presents a public health or water quality threat due to statutory, regulatory, or permit  
336 violations.

337 E. Where the facility is equipped with adequate technological capability, the department shall  
338 credit remote monitoring of the facility by a licensed operator of the appropriate class as operator  
339 attendance toward recommended licensed operator attendance hours, provided that the owner  
340 submits and the department approves a remote monitoring plan demonstrating that the facility  
341 possesses sufficient technology for the remote operator to adequately monitor the facility and  
342 manage onsite operators with a lower license class, mechanics, or other staff to operate the facility  
343 under the remote operator's direct supervision. In determining whether to approve a remote  
344 monitoring plan for multiple facilities, the department may consider the number of facilities the  
345 remote operator is monitoring simultaneously, whether the multiple facilities being monitored  
346 remotely are under common ownership, whether the remote operator is employed by the owner  
347 of the multiple facilities, and whether occasional in-person attendance is provided, among other  
348 factors. The department may cease crediting remote monitoring if the department finds that  
349 continued operation pursuant to the remote monitoring plan presents a public health or water  
350 quality threat due to statutory, regulatory, or permit violations. The department shall not credit  
351 remote monitoring by an operator without the appropriate license class who is operating the  
352 waterworks or treatment facility pursuant to a temporary waiver issued under subsection D of this  
353 section.

354 **9VAC25-790-300. Reliability.**

355 Article 3

356 Requirements for Sewerage Systems and Treatment Works Reliability

357 A. Additional operation and maintenance documentation may be necessary where  
358 performance reliability has not been established or worker safety and public health protection is  
359 questioned.

360 B. Operability. Independently operated essential equipment or components of sewerage  
361 systems and treatment works shall be provided with sufficient duplication or alternative operation  
362 so that the average daily design flow may be transported, stored, treated or otherwise managed  
363 in accordance with reliability requirements with the largest component out of service. Sufficient  
364 spare parts to ensure continuous operability of essential unit operations and equipment shall be  
365 kept in a central storeroom located at the treatment works or at other readily accessible locations,  
366 and the minimum quantities shall be in accordance with the operation and maintenance manual.  
367 The need for spare parts should be determined from review of manufacturer's recommendations,  
368 evaluation of past maintenance requirements, etc. A spare parts inventory shall be included in  
369 the operation and maintenance manual. The inventory shall list the minimum and maximum  
370 quantities of the spare parts to be kept on hand, the equipment in which they are used, their  
371 storage location, replacement procedures and other pertinent information. A suggested spare  
372 parts inventory system is contained in Part IV (9VAC25-790-940 et seq.) of this chapter.

373 C. Maintenance. A regular program of preventive maintenance shall be adhered to. The  
374 Operations and Maintenance Manual shall contain a system of maintenance requirements to be  
375 accomplished.

376 1. A minimum preventive maintenance system shall be provided in accordance with the  
377 Operations and Maintenance Manual. Such a system should provide for advanced  
378 scheduling of preventive maintenance and should be continually assessed in order to  
379 reflect increased service requirements as equipment ages or flow rates increase.

380 2. Adequate records, files and inventories to assist the operator in his task should also be  
381 maintained.

382 3. A schedule for testing the integrity of all auxiliary standby power equipment, portable  
383 pumps, automatic electrical switchover gear, and diversion piping should be developed  
384 and adhered to on a regular basis. A suggested maintenance system is outlined in this  
385 chapter. In cases where certain components of the treatment process may be damaged  
386 by flooding from natural events in such a manner as to cause excessive delays in restoring  
387 the treatment process to the design operating level, the means of removal of such  
388 components prior to flooding should be described in the Operational and Maintenance  
389 Manual.

390 D. Personnel.

391 1. Every sewage treatment works owner shall employ or contract an operator who holds  
392 a current wastewater operator license, issued in accordance with Chapter 23 (§ 54.1-2300  
393 et seq.) of Title 54.1 of the Code of Virginia, of the appropriate class for the type of facility,  
394 as determined by the department, or higher class at the owner's option. If the position of  
395 the licensed operator of the appropriate class is unexpectedly vacated due to death,  
396 extended illness, firing for cause, resignation, or similar cause, the treatment works owner  
397 shall notify the department promptly and in accordance with any specific timeframe  
398 directed by the department. The department shall temporarily waive the licensed operator  
399 requirement for the interim, provided the owner (i) informs the department in writing of its  
400 designation of another licensed operator or professional engineer responsible for interim  
401 operations within five days of the vacancy, (ii) informs the department in writing within 10  
402 days of the vacancy arising of its plan to hire a replacement licensed operator of the  
403 appropriate class as soon as practicable, (iii) implements the hiring plan diligently, and (iv)  
404 provides a monthly report to the department on the implementation and progress of such  
405 hiring plan. The department may revoke the temporary waiver if the department finds that  
406 continued operation pursuant to the waiver presents a public health or water quality threat  
407 due to statutory, regulatory, or permit violations.

408 2. The recommended attendance hours by a licensed operator and the minimum daily  
409 hours that the treatment works should be manned by operating staff are contained in Table  
410 1. The number of operating staff provided daily at a treatment works depends upon these  
411 requirements, as well as upon the permit compliance status and the operational  
412 conditions, such as:

- 413 1. a. The design capacity (flow);
- 414 2. b. The quality of the effluent;
- 415 3. c. The complexity of the treatment processes used; and
- 416 4. d. The fact that only a licensed operator may be specified as the individual in charge
- 417 of overseeing permit compliance.

418 In instances where the recommended hours of attendance by a licensed operator are less  
419 than the daily hours the treatment works is to be manned by operating staff (see Table 1),  
420 a licensed operator is not required to be physically located at the treatment works site  
421 during the remaining designated manning hours, provided that the licensed operator is  
422 able to respond to requests for assistance in a satisfactory manner, as described in the  
423 Operation and Maintenance Manual.

424 3. Where the facility is equipped with adequate technological capability, the department  
425 shall credit remote monitoring of the facility by a licensed operator of the appropriate class  
426 as operator attendance toward recommended licensed operator attendance hours,  
427 provided that the owner submits and the department approves a remote monitoring plan  
428 demonstrating that the facility possesses sufficient technology for the remote operator to  
429 adequately monitor the facility and manage onsite operators with a lower license class,  
430 mechanics, or other staff to operate the facility under the remote operator's direct

431 supervision. In determining whether to approve a remote monitoring plan for multiple  
 432 facilities, the department may consider the number of facilities the remote operator is  
 433 monitoring simultaneously, whether the multiple facilities being monitored remotely are  
 434 under common ownership, whether the remote operator is employed by the owner of the  
 435 multiple facilities, and whether occasional in-person attendance is provided, among other  
 436 factors. The department may cease crediting remote monitoring if the Department finds  
 437 that continued operation pursuant to the remote monitoring plan presents a public health  
 438 or water quality threat due to statutory, regulatory, or permit violations. The department  
 439 shall not credit remote monitoring by an operator without the appropriate license class  
 440 who is operating the waterworks or treatment facility pursuant to a temporary waiver  
 441 issued under subdivision 1 of this subsection.

442 E. Conditions. The objective of treatment works operation should be to provide the most  
 443 reliable and efficient performance that can be practically achieved in compliance with permit  
 444 requirements, while providing for safe working conditions. Operational health and safety  
 445 provisions are critical. Cross media pollution prevention measures should be evaluated and  
 446 developed where practical, and material safety data sheets for toxic chemicals used should be  
 447 readily available.

448 1. Alternate operating provisions shall be utilized as necessary in accordance with the  
 449 reliability classification. An all-weather road shall be provided to permit access to and from  
 450 the treatment works during normal weather conditions. Escape routes and methods should  
 451 be established for emergency situations.

452 2. Pretreatment requirements as set forth in the State Water Control Board's Regulations  
 453 should be established and monitored in accordance with local regulations specific to such  
 454 requirements.

455 3. Local standards and specifications approved in accordance with this chapter shall  
 456 provide for the construction methods, as necessary in accordance with the local owner's  
 457 sewer line maintenance program, to minimize excessive amounts of infiltration and inflow  
 458 and prevent the accumulation of solids or debris that would interfere with the transmission  
 459 of flow resulting in overflows, bypassing, or offline flow surcharges such as in service  
 460 connections.

461 4. Odor control measures should be established in accordance with site specific features  
 462 and weather patterns. Development of objectionable odors shall be addressed by the best  
 463 available odor control technology.

TABLE 1.  
 CLASSIFICATION OF TREATMENT WORKS AND RECOMMENDED MINIMUM HOURS OF  
 ATTENDANCE BY LICENSED OPERATORS AND OPERATING STAFF<sup>(1)</sup>.

Treatment Works Classification & Treatment Required Classification of the Operator in responsible charge	Treatment Works Capacity (MGD)	Treatment Process Methods	Recommended Attendance by a Licensed Operator <sup>(2,3)</sup> Time-Hrs.	Recommended Daily Hours That Works Should Be Manned <sup>(2,3)</sup>
--	--------------------------------	---------------------------	--	--

I	Greater than 10 MGD	Biological Treatment Methods		
		(A) Suspended Growth Reactors	24	24
		(B) Aerated Lagoons or Constructed Wetlands	16	24
		(C) Filters or Other Attached Growth Contactors	24	24
		(D) Processes Utilizing Biological Nutrient Control	24	24
		(E) Processes Utilizing Land Treatment	During Land Application	--
I	Equal to or less than 10 MGD but greater than 5 MGD	Biological Treatment Methods		
		(A) Suspended Growth Reactors	16	24
		(B) Aerated Lagoons or Constructed Wetlands	8	16
		(C) Filters or Other Attached Growth Contactors	16	24
		(D) Processes Utilizing Biological Nutrient Control	16	24
		(E) Processes Utilizing Land Treatment	During Land Application	--
I	Greater than 5 MGD	Advanced Waste Treatment (AWT)		
		(A) Ammonia Stripping	24	24
		(B) Breakpoint Chlorination	24	24
		(C) Carbon Adsorption	24	24
		(D) Chemical Coagulation, Flocculation, Precipitation	24	24
		(E) Filtration	24	24
		(F) Demineralization (Ion Exchange, Reverse Osmosis, Electrodialysis)	24	24
I		Advanced Waste Treatment		

	Equal to or less than 5 MGD but greater than 2.5 MGD	(A) Ammonia Stripping	16	24
		(B) Breakpoint Chlorination	16	24
		(C) Carbon Adsorption	16	24
		(D) Chemical Coagulation, Flocculation, Precipitation	16	24
		(E) Filtration	16	24
		(F) Demineralization (Ion Exchange, Reverse Osmosis, Electrodialysis)	16	24
		(G) Microstraining/Screening	16	24
II	Greater than 2.5 MGD but equal to or less than 5.0 MGD	Biological Treatment Methods		
		(A) Suspended Growth Reactors	8	24
		(B) Aerated Lagoons or Constructed Wetlands	8	26
		(C) Filters or Other Attached Growth Contactors	8	24
		(D) Processes Utilizing Biological Nutrient Control	8	24
		(E) Processes Utilizing Land Treatment	During Land Application	--
II	Greater than 0.5 MGD but equal to or less than 2.5 MGD	Biological Treatment Methods		
		(A) Suspended Growth Reactors	8	16
		(B) Aerated Lagoons	4	8
		(C) Filters or Other Attached Growth Contactors	8	16
		(D) Processes Utilizing Biological Nutrient Control	8	16
		(E) Processes Utilizing Land Treatment	During Land Application	--
II	Greater than 0.1 MGD but	Advanced Waste Treatment		
		(A) Ammonia Stripping	8	16

	equal to or less than 2.5 MGD	(B) Breakpoint Chlorination	8	16
		(C) Carbon Adsorption	8	16
		(D) Chemical Coagulation, Flocculation, Precipitation	8	16
		(E) Filtration	8	16
		(F) Demineralization (Ion Exchange, Reverse Osmosis, Electrodialysis)	8	16
III	Greater than 0.04 MGD but Equal to or less than 0.5 MGD	Biological Treatment Methods		
		(A) Suspended Growth Reactors	8	8
		(B) Aerated Lagoons or Constructed Wetlands	8	8
		(C) Filters or Other Attached Growth Contractors	8	8
		(D) Processes Utilizing Biological Nutrient Control	8	8
		(E) Processes Utilizing Land Treatment	During Land Application	--
III	Greater than 1.00 MGD	Natural Treatment Methods	4	8
III	Greater than 0.001 MGD but equal to or less than 0.1 MGD	Advanced Waste Treatment		
		(A) Ammonia Stripping	8	8
		(B) Breakpoint Chlorination	8	8
		(C) Carbon Adsorption	8	8
		(D) Chemical Coagulation, Flocculation, Precipitation	8	8
		(E) Filtration	8	8
		(F) Demineralization (Ion Exchange, Reverse Osmosis, Electrodialysis)	8	8
IV	Greater than 0.001 MGD but equal to or	Biological Mechanical Methods <sup>(4)</sup>	4 <sup>(5)</sup>	4 <sup>(5)</sup>

	less than 0.04 MGD			
IV	Greater than 0.001 MGD but equal to or less than 1.00 MGD	Natural Treatment Methods <sup>(4)</sup>	4 <sup>(5)</sup>	4 <sup>(5)</sup>

Notes:

(1) Specific requirements for the number of licensed operators and the number and qualifications of the operating staff specified in accordance with this chapter and in consultation with and concurrence by the director are to be evaluated on a case-by-case basis in accordance with operational reliability and permit compliance data. Such requirements are to be included in the Operation and Maintenance Manual.

(2) If a particular treatment unit or units are discontinued or not in use for a significant period of time and the remaining treatment processes result in a lower classification for the treatment works, the licensed operator and operating staff requirements during that period may be reduced to that required for the type and classification of treatment process remaining in service, after concurrence by the director.

(3) If more than one sewage treatment process is used, the more stringent requirements among the processes will apply. In some cases, complexity of operation for several AWT processes in sequence may require more than the minimum coverage.

(4) Mechanical treatment processes are defined as those containing aerated and mixed flows using electrical or outside energy sources.

(5) An operator is not required unless the facility is designated as a wastewater treatment works by DEQ.

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act to amend the Code of Virginia by adding a section numbered 32.1-172.1 and by adding in Article 4 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.19:3.5, relating to water facilities; staffing; licensed operators.

[H 220]

Approved

**Be it enacted by the General Assembly of Virginia:**  
**1. That the Code of Virginia is amended by adding a section numbered 32.1-172.1 and by adding in Article 4 of Chapter 3.1 of Title 62.1 a section numbered 62.1-44.19:3.5 as follows:**

**§ 32.1-172.1. Attendance by licensed operator.**

A. The owner of every waterworks or treatment facility identified as a classified waterworks or treatment facility by the Department shall employ or contract an operator who holds a current waterworks operator license, issued in accordance with Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1, of the appropriate class for the classification of the waterworks or treatment facility, as determined by the Board, or higher class at the owner's option. If the position of the licensed operator of the appropriate class is unexpectedly vacated due to death, extended illness, firing for cause, resignation, or similar cause, the classified waterworks or treatment facility owner shall notify the Department promptly and in accordance with any specific timeframe directed by the Board. The Department shall temporarily waive the licensed operator requirement for the interim, provided the owner (i) informs the Department in writing of its designation of another licensed operator responsible for interim operations within five days of the vacancy, (ii) informs the Department in writing within 10 days of the vacancy arising of its plan to hire a replacement licensed operator of the appropriate class as soon as practicable, (iii) implements the hiring plan diligently, and (iv) provides a monthly report to the Department on the implementation and progress of such hiring plan. The Department may revoke the temporary waiver if the Department finds that continued operation pursuant to the waiver presents a public health threat due to statutory, regulatory, or permit violations.

B. Where a waterworks or treatment facility identified as a classified waterworks or treatment facility by the Department is equipped with adequate technological capability, the Department shall credit remote monitoring of the facility by a licensed operator of the appropriate class as operator attendance, provided that the owner submits and the Department approves a remote monitoring plan demonstrating that the waterworks or treatment facility possesses sufficient technology for the remote operator to adequately monitor the waterworks or treatment facility and manage onsite operators with a lower license class, mechanics, or other staff to operate the waterworks or treatment facility under the remote operator's direct supervision. In determining whether to approve a remote monitoring plan for multiple waterworks or treatment facilities, the Department may consider the number of waterworks or treatment facilities the remote operator is monitoring simultaneously, whether the multiple facilities being monitored remotely are under common ownership, whether the remote operator is employed by the owner of multiple facilities, and whether occasional in-person attendance is provided, among other factors. The Department may cease crediting remote monitoring if the Department finds that continued operation pursuant to the remote monitoring plan presents a public health threat due to statutory, regulatory, or permit violations. The Department shall not credit remote monitoring by an operator without the appropriate license class who is operating the waterworks or treatment facility pursuant to a temporary waiver issued under subsection A.

C. Reduced operator attendance for Class 1 through Class 6 waterworks may be considered by the Department on a case-by-case basis.

**§ 62.1-44.19:3.5. Attendance by licensed operator.**

A. Every sewage treatment works owner shall employ or contract an operator who holds a current wastewater operator license, issued in accordance with Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1, of the appropriate class for the type of facility, as determined by the Department, or higher class at the owner's option. If the position of the licensed operator of the appropriate class is unexpectedly vacated due to death, extended illness, firing for cause, resignation, or similar cause, the treatment works owner shall notify the Department promptly and in accordance with any specific timeframe directed by the Department. The Department shall temporarily waive the licensed operator requirement for the interim, provided the owner (i) informs the Department in writing of its designation of another licensed operator or professional engineer responsible for interim operations within five days of the vacancy, (ii) informs the Department in writing within 10 days of the vacancy arising of its plan to hire a replacement

57 licensed operator of the appropriate class as soon as practicable, (iii) implements the hiring plan  
58 diligently, and (iv) provides a monthly report to the Department on the implementation and progress of  
59 such hiring plan. The Department may revoke the temporary waiver if the Department finds that  
60 continued operation pursuant to the waiver presents a public health or water quality threat due to  
61 statutory, regulatory, or permit violations.

62 B. Where the facility is equipped with adequate technological capability, the Department shall credit  
63 remote monitoring of the facility by a licensed operator of the appropriate class as operator attendance  
64 toward recommended licensed operator attendance hours, provided that the owner submits and the  
65 Department approves a remote monitoring plan demonstrating that the facility possesses sufficient  
66 technology for the remote operator to adequately monitor the facility and manage onsite operators with  
67 a lower license class, mechanics, or other staff to operate the facility under the remote operator's direct  
68 supervision. In determining whether to approve a remote monitoring plan for multiple facilities, the  
69 Department may consider the number of facilities the remote operator is monitoring simultaneously,  
70 whether the multiple facilities being monitored remotely are under common ownership, whether the  
71 remote operator is employed by the owner of the multiple facilities, and whether occasional in-person  
72 attendance is provided, among other factors. The Department may cease crediting remote monitoring if  
73 the Department finds that continued operation pursuant to the remote monitoring plan presents a public  
74 health or water quality threat due to statutory, regulatory, or permit violations. The Department shall  
75 not credit remote monitoring by an operator without the appropriate license class who is operating the  
76 waterworks or treatment facility pursuant to a temporary waiver issued under subsection A.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	Department of Environmental Quality (“Department”)
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-31 9VAC25-32 9 VAC 25-790
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) Sewage Collection and Treatment Regulations (9VAC25-790)
<b>Action title</b>	Amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31 et seq.); Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32 et seq.); and Sewage Collection and Treatment Regulations (9VAC25-790 et seq.) in response to Chapter 178 of the 2024 Virginia Acts of Assembly
<b>Date this document prepared</b>	May 14, 2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Final Exempt

### Cost Benefit Analysis

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

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

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

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

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p><b>Background:</b>  This final exempt regulatory action is necessary to implement Chapter 178 of the 2024 Acts of Assembly (HB 220, Delegate Orrock). This Act of Assembly revised state law to require the owner of every waterworks or treatment facility identified as a classified waterworks to employ or contract an operator who holds a current waterworks operator license. This requirement is not within the State Water Control Board or Department of Environmental Quality’s (Department) authority.</p> <p>Chapter 178 also required every sewage treatment works owner to employ or contract an operator who holds a current wastewater operator license. This rulemaking updates the VPDES Permit Regulation (9VAC25-31 et seq.); VPA Permit Regulation (9VAC25-32 et seq.); and Sewage Collection and Treatment Regulations (9VAC25-790 et seq.) to be consistent with the change to state law for sewage treatment works owners.</p> <p><b>Direct Costs:</b>  The changes do not impose any direct costs on sewage treatment works owners because each of the affected chapters already requires them to have licensed operators from the same licensing authority as the new law. Further, it does not change or increase the level of licensing or add requirements for licensed operators.</p> <p><b>Indirect Costs:</b>  None.</p> <p><b>Direct Benefits:</b>  The regulations are being amended to maintain consistency with state law. The law provides flexibility for owners in situations where a licensed operator position at a sewage treatment works is unexpectedly vacated due to death, extended illness, firing for cause, resignation, or similar cause by allowing the Department to temporarily waive the licensed operator requirement for the interim, subject to conditions specified in the law. This flexibility will result in an indeterminate benefit to sewage treatment works, their owners (which frequently are local governments), and their ratepayers.</p> <p><b>Indirect Benefits:</b>  Increased flexibility with respect to licensing requirements, subject to specified conditions, allows owners to continue to operate sewage treatment works in a manner that is protective to public health and environment.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None	(b) Indeterminate direct and indirect benefits as a result of flexibility this change in the law and regulation provides sewage treatment works.
(3) Net Monetized Benefit	Indeterminate but clearly positive.	
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources	Fiscal impact statement for Chapter 178 of the 2024 Acts of Assembly.	

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>This regulatory amendment is in response to changes to state law where no agency discretion is involved. Retaining the status quo is not an option.</p> <p><b>Direct Costs:</b> Under the existing law and regulation, sewage treatment works do not have the flexibility provided by this change in the law and regulation. This lack of flexibility results in indeterminate costs to sewage treatment works.</p> <p><b>Indirect Costs:</b> The indeterminate costs to sewage treatment works described above results in indeterminate indirect costs to owners, which frequently are local governments, and ratepayers.</p> <p><b>Direct Benefits:</b> None.</p> <p><b>Indirect Benefits:</b> None.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Indeterminate.	(b) None
(3) Net Monetized Benefit	Indeterminate but negative.	

(4) Other Costs & Benefits (Non-Monetized)	N/A
(5) Information Sources	Fiscal impact statement for Chapter 178 of the 2024 Acts of Assembly.

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>This regulatory amendment is in response to changes to state law. There are no alternative approaches.</p> <p><b>Direct Costs:</b> N/A</p> <p><b>Indirect Costs:</b> N/A</p> <p><b>Direct Benefits:</b> N/A</p> <p><b>Indirect Benefits:</b> N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> Sewage treatment works are frequently owned by local governments, see Table 1a.</p> <p><b>Indirect Costs:</b> Sewage treatment works are frequently owned by local governments, see Table 1a.</p> <p><b>Direct Benefits:</b> Sewage treatment works are frequently owned by local governments, see Table 1a.</p> <p><b>Indirect Benefits:</b> Sewage treatment works are frequently owned by local governments, see Table 1a.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See Table 1a.	(b) See Table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See Table 1a.	
(4) Assistance	None.	
(5) Information Sources	See Table 1a.	

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> N/A</p> <p><b>Indirect Costs:</b> N/A</p> <p><b>Direct Benefits:</b> N/A</p> <p><b>Indirect Benefits:</b> N/A</p>	
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Information Sources	N/A	

**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> The agency is unable to identify the number of small businesses impacted by this change to state law and regulation. Small businesses impacted the same as other entities. See Table 1a.</p> <p>Indirect Costs: None.</p> <p>Direct Benefits: See Table 1a.</p> <p>Indirect Benefits: See Table 1a.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See Table 1a.	(b) See Table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See Table 1a.	
(4) Alternatives	None.	
(5) Information Sources	See Table 1a.	

**Changes to Number of Regulatory Requirements**

**Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

*Change in Regulatory Requirements*

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-31-200	(M/A):	2	6	0	+6
	(D/A):	0	0	0	0
	(M/R):	13	3	0	+3
	(D/R):	0	0	0	0
9VAC25-32-190	(M/A):	1	6	0	+6
	(D/A):	0	0	0	0
	(M/R):	2	3	0	+3
	(D/R):	0	0	0	0
9VAC25-790-300*	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	15	0	0	0
	(D/R):	14	0	0	0
<b>Grand Total of Changes in Requirements:</b>					(M/A): +12 (D/A): 0 (M/R): +6 (D/R): 0

This is a final exempt regulatory action. No changes are proposed other than incorporation of requirements in response to Chapter 178 of the 2024 Acts of Assembly.

\* Sewage treatment facilities are regulated by permits issued in accordance with the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31) or the Virginia Pollution Abatement Regulations (9VAC25-32). Statutory operator requirements have been included in 9VAC25-790 for clarity but are not included in the count of regulatory requirements to avoid double counting of regulatory requirements.

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Cost Reductions or Increases (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Requirement</b>	<b>Initial Cost</b>	<b>New Cost</b>	<b>Overall Cost Savings/Increases</b>
N/A				

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Change</b>	<b>Overview of How It Reduces or Increases Regulatory Burden</b>
N/A		

*Length of Guidance Documents (only applicable if guidance document is being revised)*

<b>Title of Guidance Document</b>	<b>Original Word Count</b>	<b>New Word Count</b>	<b>Net Change in Word Count</b>
NA			

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

**TAB D**



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Travis A. Voyles  
Secretary of Natural and Historic Resources

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Director  
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MEMORANDUM

TO: State Water Control Board Members

FROM: Scott Morris, Water Division Director 

DATE: May 29, 2024

SUBJECT: Final Exempt Action: Amendment to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) in response to Chapter 251 of the 2024 Virginia Acts of Assembly (Sen. Stuart, SB 581)

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At the June 25, 2024, meeting of the State Water Control Board, the Department will present the Board with final amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) These amendments are necessary to implement Chapter 251 of the 2024 Acts of Assembly (Sen. Stuart, SB 581).

Chapter 251 of the 2024 Acts of Assembly (Sen. Stuart, SB 581) revises state law to authorize the Department to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its surface water and groundwater permit decisions. Such data may include information relating to water levels, flow rates, and water quality. The Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) are being amended to be consistent with the change to state law. These regulatory amendments are exempt from the state administrative procedures for adoption of regulations because they are necessary to conform to Virginia statutory law (§ 2.2-4006(A)(4)(a) of the Code of Virginia). A copy of Chapter 251 of the 2024 Virginia Acts of Assembly is attached to this memorandum. The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

After making a presentation on the proposed amendments and answering any questions the Board may have, staff will ask the Board for final approval of amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

### **ATTACHMENTS**

- TH09- Exempt Action Final Regulation Agency Background Document- Amendment to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) in response to Chapter 251 of the 2024 Virginia Acts of Assembly
- Project 7872 - Final Exempt Action: Amendments in response to CH251 of the 2024 Acts of Assembly- Amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.)
- Chapter 251 of the 2024 Acts of Assembly

### **PRESENTER CONTACT INFORMATION**

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[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-210 9VAC25-610
<b>VAC Chapter title(s)</b>	Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.)
<b>Action title</b>	Amendment to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) in response to Chapter 251 of the 2024 Virginia Acts of Assembly
<b>Final agency action date</b>	June 25, 2024
<b>Date this document prepared</b>	April 17, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

This final exempt regulatory action is necessary to implement Chapter 251 of the 2024 Acts of Assembly (Sen. Stuart, SB 581). This Act of Assembly revises state law to authorize the Board to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its surface water and groundwater permit decisions. Such data may include information relating to water levels, flow rates, and water quality. The Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) are being amended to be consistent with the change to state law.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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The Governor signed SB581 (Chapter 251 of the 2024 Acts of Assembly) into law and these changes will become effective July 1, 2024. The Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) are being amended to be consistent with the change to state law.

This regulatory action is required to conform the existing regulations to changes in state law. Section 2.2-4006 A 4 a of the Code of Virginia, excludes regulations that are necessary to conform to changes in Virginia statutory law or the Appropriation Act where no agency discretion is involved from the requirements of the Administrative Process Act.

## Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

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On June 25, 2024, the State Water Control Board approved final amendments to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7872 - Exempt Final- Amendments in response to CH251 of the 2024 Acts of**  
2 **Assembly- Amendments to the Virginia Water Protection Permit Program Regulation**  
3 **(9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.)- for**  
4 **June 25, 2024, State Water Control Board meeting**

5  
6 **9VAC25-210-315. Use of data in permit decision for surface water withdrawals.**

7 The department is authorized to utilize and incorporate comprehensive groundwater, surface  
8 water, and aquifer data in its permit decision. Such data may include information relating to water  
9 levels, flow rates, and water quality.

10 **9VAC25-610-110. Evaluation criteria for permit applications.**

11 A. The department shall not issue any permit for more groundwater than will be applied to the  
12 proposed beneficial use.

13 B. The department shall issue groundwater withdrawal permits to persons withdrawing  
14 groundwater or who have rights to withdraw groundwater prior to July 1, 1992, in the Eastern  
15 Virginia or Eastern Shore Groundwater Management Area and not excluded from requirements  
16 of this chapter by 9VAC25-610-50 based on the following criteria:

17 1. The department shall issue a groundwater withdrawal permit for persons meeting the  
18 criteria of subdivision 1 of 9VAC25-610-90 for the total amount of groundwater withdrawn  
19 in any consecutive 12-month period between July 1, 1987, and June 30, 1992; however,  
20 with respect to a political subdivision, an authority serving a political subdivision or a  
21 community waterworks regulated by the Department of Health, the department shall issue  
22 a groundwater withdrawal permit for the total amount of water withdrawn in any  
23 consecutive 12-month period between July 1, 1980, and June 30, 1992.

24 2. The department shall issue a groundwater withdrawal permit for persons meeting the  
25 criteria of subdivision 2 of 9VAC25-610-90 for the total amount of groundwater withdrawn  
26 and applied to a beneficial use in any consecutive 12-month period between July 1, 1992,  
27 and June 30, 1995.

28 3. The department shall issue a groundwater withdrawal permit for persons meeting the  
29 criteria of subdivision 4 of 9VAC25-610-90 for the total amount of groundwater withdrawn  
30 in any consecutive 12-month period between July 1, 1983, and June 30, 1993. The  
31 department shall evaluate all estimates of groundwater withdrawal based on projected  
32 water demands for crops and livestock as published by the Virginia Cooperative Extension  
33 Service, the United States Natural Resources Conservation Service, or other similar  
34 references and make a determination whether they are reasonable. In all cases only  
35 reasonable estimates will be used to document a permit limit.

36 4. The department shall issue a groundwater withdrawal permit for persons meeting the  
37 criteria of subdivision 5 of 9VAC25-610-90 for the amount of groundwater withdrawal  
38 needed to annually meet human consumption needs as proven in the water conservation  
39 and management plan approved by the department. The department shall include  
40 conditions in such permits that require the implementation of mandatory use restrictions  
41 before such withdrawals can be exercised.

42 5. When requested by persons described in subdivisions 1, 2, and 4 of 9VAC25-610-90  
43 the department may issue groundwater withdrawal permits that include withdrawal  
44 amounts in excess of those which an applicant can support based on historic usage.  
45 These additional amounts shall be based on documentation of water savings achieved  
46 through water conservation measures. The applicant shall demonstrate withdrawals prior  
47 to implementation of water conservation measures, type of water conservation measure

48 implemented, and withdrawals after implementation of water conservation measures. The  
49 applicant shall provide evidence of withdrawal amounts through metered withdrawals and  
50 estimated amounts shall not be accepted to claim additional withdrawal amounts due to  
51 water conservation. Decreases in withdrawal amounts due to production declines, climatic  
52 conditions, population declines, or similar events shall not be used as a basis to claim  
53 additional withdrawal amounts based on water conservation.

54 C. The department shall issue groundwater withdrawal permits to persons withdrawing  
55 groundwater when a groundwater management area is declared or expanded after July 1, 1992,  
56 and not excluded from requirements of this chapter by 9VAC25-610-50 based on the following  
57 criteria:

58 1. The department shall issue a groundwater withdrawal permit to nonagricultural users  
59 for the total amount of groundwater withdrawn in any consecutive 12-month period during  
60 the five years preceding the effective date of the regulation creating or expanding the  
61 groundwater management area.

62 2. The department shall issue a groundwater withdrawal permit to agricultural users for  
63 the total amount of groundwater withdrawn in any consecutive 12-month period during the  
64 10 years preceding the effective date of the regulation creating or expanding the  
65 groundwater management area. The department shall evaluate all estimates of  
66 groundwater withdrawal based on projected water demands for crops and livestock as  
67 published by the Virginia Cooperative Extension Service, the United States Natural  
68 Resources Conservation Service, or other similar references and make a determination  
69 whether they are reasonable. In all cases only reasonable estimates will be used to  
70 document a permit limit.

71 3. When requested by the applicant the department may issue groundwater withdrawal  
72 permits that include withdrawal amounts in excess of those which an applicant can support  
73 based on historic usage. These additional amounts shall be based on documentation of  
74 water savings achieved through water conservation measures. The applicant shall  
75 demonstrate withdrawals prior to implementation of water conservation measures, type of  
76 water conservation measure implemented, and withdrawals after implementation of water  
77 conservation measures. The applicant shall provide evidence of withdrawal amounts  
78 through metered withdrawals and estimated amounts shall not be accepted to claim  
79 additional withdrawal amounts due to water conservation. Decreases in withdrawal  
80 amounts due to production declines, climatic conditions, population declines, or similar  
81 events shall not be used as a basis to claim additional withdrawal amounts based on water  
82 conservation.

83 D. The department shall issue groundwater withdrawal permits to persons wishing to initiate  
84 a new withdrawal, expand an existing withdrawal, or reapply for a current withdrawal in any  
85 groundwater management area who have submitted complete applications and are not excluded  
86 from requirements of this chapter by 9VAC25-610-50 based on the following criteria:

87 1. The applicant shall provide all information required in subdivision 2 of 9VAC25-610-94  
88 prior to the department's determination that an application is complete. The department  
89 may require the applicant to provide any information contained in subdivision 3 of  
90 9VAC25-610-94 prior to considering an application complete based on the anticipated  
91 impact of the proposed withdrawal on existing groundwater users or the groundwater  
92 resource.

93 2. The department shall perform a technical evaluation to determine the areas of any  
94 aquifers that will experience at least one foot of water level declines due to the proposed  
95 withdrawal and may evaluate the potential for the proposed withdrawal to cause salt water  
96 intrusion into any portions of any aquifers or the movement of waters of lower quality to

97 areas where such movement would result in adverse impacts on existing groundwater  
98 users or the groundwater resource. Prior to public notice of a draft permit developed in  
99 accordance with the findings of the technical evaluation and at the request of the applicant,  
100 the results of the technical evaluation, including all assumptions and input, will be provided  
101 to the applicant for review.

102 3. The department shall issue a groundwater withdrawal permit when it is demonstrated,  
103 by a complete application and the department's technical evaluation, to the department's  
104 satisfaction that the maximum safe supply of groundwater will be preserved and protected  
105 for all other beneficial uses and that the applicant's proposed withdrawal will have no  
106 significant unmitigated impact on existing groundwater users or the groundwater resource.  
107 In order to assure that the applicant's proposed withdrawal complies with the above stated  
108 requirements, the demonstration shall include, but not be limited to, compliance with the  
109 following criteria:

110 a. The applicant demonstrates that no other sources of water supply, including  
111 reclaimed water, are practicable.

112 b. The applicant demonstrates that the groundwater withdrawal will originate from the  
113 aquifer that contains the lowest quality water that will support the proposed beneficial  
114 use.

115 c. The applicant demonstrates that no pumps or water intake devices are placed lower  
116 than the top of the uppermost confined aquifer that a well utilizes as a groundwater  
117 source or lower than the bottom of an unconfined aquifer that a well utilizes as a  
118 groundwater source in order to prevent dewatering of a confined aquifer, loss of  
119 inelastic storage, or damage to the aquifer from compaction.

120 d. The applicant demonstrates that the amount of groundwater withdrawal requested  
121 is the smallest amount of withdrawal necessary to support the proposed beneficial use  
122 and that the amount is representative of the amount necessary to support similar  
123 beneficial uses when adequate conservation measures are employed.

124 e. The applicant provides a water conservation and management plan as described in  
125 9VAC25-610-100 and implements the plan as an enforceable condition of the  
126 groundwater withdrawal permit.

127 f. The applicant provides certification by the local governing body that the location and  
128 operation of the withdrawing facility is in compliance with all ordinances adopted  
129 pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

130 g. The department's technical evaluation demonstrates that the area of impact of the  
131 proposed withdrawal will remain on property owned by the applicant or that there are  
132 no existing groundwater withdrawers within the area of impact of the proposed  
133 withdrawal.

134 In cases where the area of impact does not remain on the property owned by the  
135 applicant or existing groundwater withdrawers will be included in the area of impact,  
136 the applicant shall provide and implement a plan to mitigate all adverse impacts on  
137 existing groundwater users. Approvable mitigation plans shall, at a minimum, contain  
138 the following features and implementation of the mitigation plan shall be included as  
139 enforceable permit conditions:

140 (1) The rebuttable presumption that water level declines that cause adverse impacts  
141 to existing wells within the area of impact are due to the proposed withdrawal;

142 (2) A commitment by the applicant to mitigate undisputed adverse impacts due to the  
143 proposed withdrawal in a timely fashion;

144 (3) A speedy, nonexclusive, low-cost process to fairly resolve disputed claims for  
145 mitigation between the applicant and any claimant; and

146 (4) The requirement that the claimant provide documentation that he is the owner of  
147 the well; documentation that the well was constructed and operated prior to the  
148 initiation of the applicant's withdrawal; the depth of the well, the pump, and screens  
149 and any other construction information that the claimant possesses; the location of the  
150 well with enough specificity that it can be located in the field; the historic yield of the  
151 well, if available; historic water levels for the well, if available; and the reasons the  
152 claimant believes that the applicant's withdrawals have caused an adverse impact on  
153 the well.

154 h. The department's technical evaluation demonstrates that the stabilized effects from  
155 the proposed withdrawal in combination with the stabilized combined effects of all  
156 existing lawful withdrawals will not lower water levels, in any confined aquifer that the  
157 withdrawal impacts, below a point that represents 80% of the distance between the  
158 land surface and the top of the aquifer. Compliance with the 80% drawdown criteria  
159 will be determined at the points where the predicted one-foot drawdown contour is  
160 predicted for the proposed withdrawal.

161 i. The department's technical evaluation demonstrates that the proposed groundwater  
162 withdrawal will not result in salt water intrusion or the movement of waters of lower  
163 quality to areas where such movement would result in adverse impacts on existing  
164 groundwater users or the groundwater resource. This provision shall not exclude the  
165 withdrawal of brackish water provided that the proposed withdrawal will not result in  
166 unmitigated adverse impacts.

167 4. The department shall also take the following factors into consideration when evaluating  
168 a groundwater withdrawal permit application or special conditions associated with a  
169 groundwater withdrawal permit:

170 a. The nature of the use of the proposed withdrawal;

171 b. The public benefit provided by the proposed withdrawal;

172 c. The proposed use of innovative approaches such as aquifer storage and recovery  
173 systems, surface water and groundwater conjunctive use systems, multiple well  
174 systems that blend withdrawals from aquifers that contain different quality groundwater  
175 in order to produce potable water, and desalinization of brackish groundwater;

176 d. Prior public investment in existing facilities for withdrawal, transmission, and  
177 treatment of groundwater;

178 e. Climatic cycles;

179 f. Economic cycles;

180 g. The unique requirements of nuclear power stations;

181 h. Population and water demand projections during the term of the proposed permit;

182 i. The status of land use and other necessary approvals; and

183 j. Other factors that the department deems appropriate.

184 E. When proposed uses of groundwater are in conflict or available supplies of groundwater  
185 are not sufficient to support all those who desire to use them, the department shall prioritize the  
186 evaluation of applications in the following manner:

187 1. Applications for human consumption shall be given the highest priority;

188 2. Should there be conflicts between applications for human consumption, applications  
189 will be evaluated in order based on the date that said applications were considered  
190 complete; and

191 3. Applications for all uses, other than human consumption, will be evaluated following the  
192 evaluation of proposed human consumption in order based on the date that said  
193 applications were considered complete.

194 F. Criteria for review of reapplications for groundwater withdrawal permit.

195 1. The department shall consider all criteria in subsection D of this section prior to reissuing  
196 a groundwater withdrawal permit. Existing permitted withdrawal amounts shall not be the  
197 sole basis for determination of the appropriate withdrawal amounts when a permit is  
198 reissued.

199 2. The department shall reissue a permit to any public water supply user for an annual  
200 amount no less than the amount equal to that portion of the permitted withdrawal that was  
201 used by said system to support human consumption during 12 consecutive months of the  
202 previous term of the permit.

203 G. The department is authorized to utilize and incorporate comprehensive groundwater,  
204 surface water, and aquifer data in its permit decision. Such data may include information relating  
205 to water levels, flow rates, and water quality.

# VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

## CHAPTER 251

*An Act to amend and reenact §§ 62.1-44.15:22, as it is currently effective and as it shall become effective, and 62.1-263 of the Code of Virginia, relating to Department of Environmental Quality; data; groundwater and surface water withdrawal permits.*

[S 581]

Approved March 28, 2024

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 62.1-44.15:22, as it is currently effective and as it shall become effective, and 62.1-263 of the Code of Virginia are amended and reenacted as follows:**

**§ 62.1-44.15:22. (For contingent expiration date, see Acts 2021, Sp. Sess. I, c. 100) Water withdrawals and preservation of instream flow.**

A. Conditions contained in a Virginia Water Protection Permit may include but are not limited to the volume of water which may be withdrawn as a part of the permitted activity and conditions necessary to protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest priority uses. *The Board is authorized to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its permit decision. Such data may include information relating to water levels, flow rates, and water quality.*

B. Notwithstanding any other provision, no Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new § 401 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

C. The Board may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when it finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in § 62.1-44.15:20 C and only for the amount of water necessary to protect public health and safety. These agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions of § 62.1-44.15:20 B, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under the other provisions of this section. The application for the Virginia Water Protection Permit shall be subject to public comment for a period established by the Board. Any Emergency Virginia Water Protection Permit issued under this section shall be valid until the Board approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

**§ 62.1-44.15:22. (For contingent effective date, see Acts 2021, Sp. Sess. I, c. 100) Water withdrawals and preservation of instream flow.**

A. 1. Conditions contained in a Virginia Water Protection Permit may include the volume of water that may be withdrawn as a part of the permitted activity and conditions necessary to protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest priority uses. *The Board is authorized to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its permit decision. Such data may include information relating to water levels, flow rates, and water quality.*

2. Every application for a Virginia Water Protection Permit for a surface water withdrawal shall include a (i) water auditing plan and (ii) leak detection and repair plan. Both such plans shall comply with requirements established by the Board in regulations. The Board shall approve every water auditing plan and leak detection and repair plan that complies with such regulatory requirements. Once approved by the Board, such water auditing plan and leak detection and repair plan shall be incorporated by reference as a condition in the Virginia Water Protection Permit. The Board shall not issue a Virginia Water Protection Permit for a surface water withdrawal without an approved water auditing plan and an approved leak detection and repair plan.

B. Notwithstanding any other provision of law, no Virginia Water Protection Permit shall be required for any water withdrawal in existence on July 1, 1989; however, a permit shall be required if a new

§ 401 certification is required to increase a withdrawal. No Virginia Water Protection Permit shall be required for any water withdrawal not in existence on July 1, 1989, if the person proposing to make the withdrawal received a § 401 certification before January 1, 1989, with respect to installation of any necessary withdrawal structures to make such withdrawal; however, a permit shall be required before any such withdrawal is increased beyond the amount authorized by the certification.

C. The Board may issue an Emergency Virginia Water Protection Permit for a new or increased withdrawal when it finds that because of drought there is an insufficient public drinking water supply that may result in a substantial threat to human health or public safety. Such a permit may be issued to authorize the proposed activity only after conservation measures mandated by local or state authorities have failed to protect public health and safety and notification of the agencies designated in subsection C of § 62.1-44.15:20 and only for the amount of water necessary to protect public health and safety. Such agencies shall have five days to provide comments or written recommendations on the issuance of the permit. Notwithstanding the provisions of subsection B of § 62.1-44.15:20, no public comment shall be required prior to issuance of the emergency permit. Not later than 14 days after the issuance of the emergency permit, the permit holder shall apply for a Virginia Water Protection Permit authorized under other provisions of this section. The application for such Virginia Water Protection Permit shall be subject to public comment for a period established by the Board. Any Emergency Virginia Water Protection Permit issued under this section shall be valid until the Board approves or denies the subsequent request for a Virginia Water Protection Permit or for a period of one year, whichever occurs sooner. The fee for the emergency permit shall be 50 percent of the fee charged for a comparable Virginia Water Protection Permit.

**§ 62.1-263. Criteria for issuance of permits.**

When reviewing an application for a permit to withdraw ground water, or an amendment to a permit, the Board may consider the nature of the proposed beneficial use, the proposed use of alternate or innovative approaches such as aquifer storage and recovery systems and surface and ground water conjunctive uses, climatic cycles, unique requirements for nuclear power stations, economic cycles, population projections, the status of land use and other necessary approvals, and the adoption and implementation of the applicant's water conservation and management plan. In no case shall a permit be issued for more ground water than can be applied to the proposed beneficial use.

When proposed uses of ground water are in conflict or when available supplies of ground water are insufficient for all who desire to use them, preference shall be given to uses for human consumption, over all others.

In evaluating permit applications, the Board shall ensure that the maximum possible safe supply of ground water will be preserved and protected for all other beneficial uses. *The Board is authorized to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its permit application evaluation. Such data may include information relating to water levels, flow rates, and water quality.*

In evaluating the available ground water with respect to permit applications for new or expanded withdrawals in the Eastern Virginia or Eastern Shore Groundwater Management Areas, the Board shall use the average of the actual historical ground water usage from the inception of the ground water withdrawals of a political subdivision or authority operating a ground water and surface water conjunctive use system and shall not use the total permit capacity of such system in determining such availability.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-210 9VAC25-610
<b>VAC Chapter title(s)</b>	The Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.)
<b>Action title</b>	Amendment to the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) in response to Chapter 251 of the 2024 Virginia Acts of Assembly (Sen. Stuart, SB 581)
<b>Date this document prepared</b>	May 30, 2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Final exempt

**Cost Benefit Analysis**

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

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

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

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

(1) Direct & Indirect Costs &	<b>Background:</b> This final exempt regulatory action is necessary to implement Chapter 251 of the 2024 Acts of Assembly. (Sen. Stuart, SB 581). This Act of
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<p>Benefits (Monetized)</p>	<p>Assembly revised state law to authorize DEQ to utilize and incorporate comprehensive groundwater, surface water, and aquifer data in its surface water withdrawal and groundwater permit decisions. Such data may include information relating to water levels, flow rates, and water quality. This rulemaking updates the Virginia Water Protection Permit Program Regulation (9VAC25-210 et seq.) and Groundwater Withdrawal Regulations (9VAC25-610 et seq.) to be consistent with state law.</p> <p><b>Direct Costs:</b> State law was recently amended to allow DEQ to use groundwater, surface water, and aquifer data in permitting decisions. DEQ already incorporates this data in permits for surface water withdrawals in nontidal areas and groundwater withdrawals. This change in the law and regulation is permissive, and therefore does not necessarily result in a direct cost. However, if DEQ chose to utilize the authority provided by law for surface water withdrawals in tidal areas the cost would be about \$100,000 per permit. On average DEQ issues one permit per year for withdrawals in tidal areas.</p> <p><b>Indirect Costs:</b> None.</p> <p><b>Direct Benefits:</b> Utilizing groundwater, surface water, and aquifer data in permitting decisions protects surface water and groundwater aquifers from being overdrawn and allows for the safe withdrawal of surface water and groundwater that is able to sustain future economic growth and development. This benefit is not able to be monetized.</p> <p><b>Indirect Benefits:</b> None.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct &amp; Indirect Costs</p>	<p>Direct &amp; Indirect Benefits</p>
	<p>(a) None, because this new authority provided for in law is permissive. However, if DEQ chose to utilize this authority for surface water withdrawal permits in tidal waters it would have a cost of about \$100,000 per permit.</p>	<p>(b) Unable to monetize.</p>
<p>(3) Net Monetized Benefit</p>	<p>Indeterminate.</p>	

(4) Other Costs & Benefits (Non-Monetized)	N/A.
(5) Information Sources	Department of Planning and Budget 2024 Session Fiscal Impact Statement for SB 581.

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>This regulatory amendment is in response to changes to state law. Retaining the status quo is not an option.</p> <p><b>Direct Costs:</b> N/A</p> <p><b>Indirect Costs:</b> N/A</p> <p><b>Direct Benefits:</b> N/A</p> <p><b>Indirect Benefits:</b> N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	Department of Planning and Budget 2024 Session Fiscal Impact Statement for SB 581.	

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>This regulatory amendment is in response to changes to state law. There is no alternative approach.</p> <p><b>Direct Costs:</b> N/A</p>
--	--

	<b>Indirect Costs:</b> N/A  <b>Direct Benefits:</b> N/A  <b>Indirect Benefits:</b> N/A	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	Department of Planning and Budget 2024 Session Fiscal Impact Statement for SB 581.	

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

(1) Direct & Indirect Costs & Benefits (Monetized)	Local partners would be impacted the same as other entities. <b>Direct Costs:</b> See Table 1 a.  <b>Indirect Costs:</b> See Table 1 a.  <b>Direct Benefits:</b> See Table 1 a.  <b>Indirect Benefits:</b> See Table 1 a.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits

	(a) See Table 1 a.	(b) See Table 1 a.
(3) Other Costs & Benefits (Non-Monetized)	See Table 1 a.	
(4) Assistance	None	
(5) Information Sources	See Table 1 a.	

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Single family residences are not regulated by this regulation. Surface Water withdrawal permits are not required for withdrawals for normal single-family home use, residential gardening, and lawn and landscape maintenance. Groundwater withdrawal permits are required for withdrawals of 300,000 gallons per month in a groundwater management area. Single family residence water use is below that amount.</p> <p><b>Direct Costs:</b> N/A</p> <p><b>Indirect Costs:</b> N/A</p> <p><b>Direct Benefits:</b> N/A</p> <p><b>Indirect Benefits:</b> N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A

(3) Other Costs & Benefits (Non-Monetized)	N/A
(4) Information Sources	N/A

**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>The agency is unable to identify the number of small businesses impacted by this change to state law and regulation. Small businesses impacted the same as other entities.</p> <p><b>Direct Costs:</b> See Table 1 a.</p> <p><b>Indirect Costs:</b> See Table 1 a.</p> <p><b>Direct Benefits:</b> See Table 1 a.</p> <p><b>Indirect Benefits:</b> See Table 1 a.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See Table 1 a.	(b) See Table 1 a.
(3) Other Costs & Benefits (Non-Monetized)	See Table 1 a.	
(4) Alternatives	See Table 1 a.	
(5) Information Sources	See Table 1 a.	

**Changes to Number of Regulatory Requirements**

**Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

*Change in Regulatory Requirements*

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-210-315	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-610-110	(M/A):	29	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
<b>Grand Total of Changes in Requirements:</b>					(M/A): 0 (D/A): 0 (M/R): 0 (D/R): 0

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Cost Reductions or Increases (if applicable)*

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
N/A				

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
N/A		

*Length of Guidance Documents (only applicable if guidance document is being revised)*

<b>Title of Guidance Document</b>	<b>Original Word Count</b>	<b>New Word Count</b>	<b>Net Change in Word Count</b>
N/A			

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

# TAB E



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

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(800) 592-5482

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Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

MEMORANDUM

TO: State Water Control Board Members

FROM: Scott Morris, Water Division Director

A handwritten signature in blue ink, appearing to read "Scott Morris".

DATE: May 29, 2024

SUBJECT: Final Exempt Action: Citation updates in response to consolidation of Stormwater regulations

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At the June 25, 2024, meeting of the State Water Control Board, the Department will present the Board with final amendments to the following regulations:

- Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31);
- Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (9VAC25-115);
- Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151);
- Virginia Water Protection Permit Regulation (9VAC25-210);
- Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830);
- VPDES General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) (9VAC25-890); and
- Certification of Nonpoint Source Nutrient Credits (9VCA25-900).

Effective July 1, 2024, the current Erosion and Sediment Control Regulations (9VAC25-840), Erosion and Sediment Control and Stormwater Management Certification Requirements (9VAC25-850), and Virginia Stormwater Management Program (VSMP) Regulation (9VAC25-870) will be

repealed and replaced with the consolidated stormwater regulations, the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). Additionally, in response to Chapters 68 and 758 of the 2016 Acts of Assembly, changes to the Code of Virginia relating to stormwater and erosion and sediment control program become effective July 1, 2024.

Amendments to the regulations include the following:

- Updating citations referencing 9VAC25-840 with the applicable citation to 9VAC25-875;
- Updating citations referencing 9VAC25-870 with the applicable citation to 9VAC25-875;
- Updating the name of 9VAC25-875;
- Correcting the website address for the Virginia Stormwater BMP Clearinghouse;
- Correcting the name of Article 2.3 of Chapter 3.1 of the Code of Virginia to the Virginia Erosion and Stormwater Management Act;
- Correcting the name of Article 2.4 of Chapter 3.1 of the Code of Virginia to the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program; and
- Revising terminology to comply with state law requirements.

These amendments are necessary to update citations in State Water Control Board regulations to reference the Virginia Erosion and Stormwater Management Regulation (9VAC25-875) that becomes effective July 1, 2024, and are exempt from the state administrative procedures for adoption of regulations because they consist only of changes in style or form or corrections of technical errors (§ 2.2-4006 A 3 of the Code of Virginia). Changes are also being made to State Water Board regulations to reflect changes to the Code of Virginia that become effective July 1, 2024. Section 2.2-4006 A 4 a of the Code of Virginia exempts changes to regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.

The Office of the Attorney General will be sent the regulation for certification of authority to adopt the amendments.

After making a presentation on the proposed amendments and answering any questions the Board may have, staff will ask the Board for final approval of amendments to the following regulations and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

### **ATTACHMENTS**

- TH09- Exempt Action Final Regulation Agency Background Document - Citation updates in response to consolidation of Stormwater regulations and revisions to the Code of Virginia
- Project 7886- Final Exempt Action: Citation updates to water regulations in response to consolidation of stormwater regulations and statutory changes for June 25, 2024 State Water Control Board meeting

### **PRESENTER CONTACT INFORMATION**

State Water Control Board Members

May 29, 2024

Page 2

**Name:** Scott Morris, Water Division Director

**Phone:** (804) 659-1383

**Email:** [anthony.morris@deq.virginia.gov](mailto:anthony.morris@deq.virginia.gov)



[townhall.virginia.gov](http://townhall.virginia.gov)

## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-31 9VAC25-115 9VAC25-151 9VAC25-210 9VAC25-830 9VAC25-890 9VCA25-900
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity Virginia Water Protection Permit Regulation Chesapeake Bay Preservation Area Designation and Management Regulations Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) Certification of Nonpoint Source Nutrient Credits
<b>Action title</b>	Citation updates in response to consolidation of Stormwater regulations and revisions to the Code of Virginia
<b>Final agency action date</b>	June 25, 2024
<b>Date this document prepared</b>	April 30, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the

Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

## Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

These amendments are necessary to update citations to reference the Virginia Erosion and Stormwater Management Regulation 9VAC25-875 that becomes effective July 1, 2024. Changes are also being made to State Water Board regulations to reflect changes to the Code of Virginia that become effective July 1, 2024.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

Effective July 1, 2024, the current 9VAC25-840 Erosion and Sediment Control Regulations, 9VAC25-850 Erosion and Sediment Control and Stormwater Management Certification Requirements, and 9VAC25-870 Virginia Stormwater Management Program (VSMP) Regulation will be repealed and replaced with the consolidated stormwater regulations, the Virginia Erosion and Stormwater Management Regulation 9VAC25-875.

These amendments are necessary to update citations in State Water Control Board regulations to reference the Virginia Erosion and Stormwater Management Regulation 9VAC25-875 that becomes effective July 1, 2024, and are exempt from the state administrative procedures for adoption of regulations because they consist only of changes in style or form or corrections of technical errors (§ 2.2-4006 A 3 of the Code of Virginia).

Changes to the Code of Virginia relating to the stormwater and erosion and sediment control program also become effective July 1, 2024. (Chapters 68 and 758 of the 2016 Acts of Assembly.) Amendments are being made to State Water Board regulations to reflect changes to the Code of Virginia that become effective July 1, 2024. Section 2.2-4006 A 4 a of the Code of Virginia exempts changes to regulations that are necessary to conform to changes in Virginia statutory law or the appropriation act where no agency discretion is involved.

Amendments to the regulations include the following:

- Updating citations referencing 9VAC25-840 with the applicable citation to 9VAC25-875;
- Updating citations referencing 9VAC25-870 with the applicable citation to 9VAC25-875;
- Updating the name of 9VAC25-875;
- Correcting the website address for the Virginia Stormwater BMP Clearinghouse;
- Correcting the name of Article 2.3 of Chapter 3.1 of the Code of Virginia to the Virginia Erosion and Stormwater Management Act;
- Correcting the name of Article 2.4 of Chapter 3.1 of the Code of Virginia to the Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program; and
- Revising terminology to comply with state law requirements.

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

---

On June 25, 2024, the State Water Control Board approved final amendments to the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-31); Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities (9VAC25-115); Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity (9VAC25-151); Virginia Water Protection Permit Regulation (9VAC25-210); Chesapeake Bay Preservation Area Designation and Management Regulations (9VAC25-830); VPDES General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) (9VAC25-890); and Certification of Nonpoint Source Nutrient Credits (9VCA25-900) and affirmed that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.

1 **Project 7886 - Exempt Final- Citation updates to water regulations in response to**  
2 **consolidation of stormwater regulations and statutory changes for June 25, 2024 State**  
3 **Water Control Board meeting**

4 **9VAC25-31-950. Purpose and scope.**

5 A. This part, in conjunction with the reporting requirements specified in this chapter and  
6 ~~9VAC25-870~~ 9VAC25-875, specifies the requirements for:

- 7 1. Electronic reporting of information by VPDES permittees;
- 8 2. Facilities or entities seeking coverage under VPDES general permits;
- 9 3. Facilities or entities submitting stormwater certifications or waivers from VPDES permit  
10 requirements;
- 11 4. Industrial users located in municipalities without approved local pretreatment programs;  
12 and
- 13 5. Approved pretreatment programs.

14 B. Proper collection, management, and sharing of the data and information listed in Appendix  
15 A of 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030, ensures that there is timely,  
16 complete, accurate, and nationally consistent set of data about the NPDES program.

17 **9VAC25-31-960. Definitions.**

18 In addition to the definitions given in Part I (9VAC25-31-10 et seq.) of this chapter, the  
19 following definitions apply to this part.

20 "NPDES data group" means the group of related data elements identified in Table 1 in  
21 Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030. These NPDES  
22 data groups have similar regulatory reporting requirements and have similar data sources.

23 "Minimum set of NPDES data" means the data and information listed in Appendix A to 40 CFR  
24 Part 127 as adopted by reference in 9VAC25-31-1030.

25 "Program reports" means the information reported by VPDES-regulated entities and listed in  
26 Table 1 of Appendix A to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030, except  
27 NPDES Data Groups 1, 2, and 3.

28 "VPDES-regulated entity" means any entity regulated by the VPDES Program in accordance  
29 with this chapter or ~~9VAC25-870~~ 9VAC25-875.

30 **9VAC25-31-970. Types of data to be reported electronically by VPDES permittees, facilities,**  
31 **and entities subject to this part.**

32 A. VPDES-regulated entities must electronically submit the minimum set of NPDES data for  
33 these reports if such reporting requirements are applicable. The following reports are the source  
34 of the minimum set of data from regulated entities:

- 35 1. Discharge Monitoring Report (9VAC25-31-190 and ~~9VAC25-870-430~~ 9VAC25-875-  
36 1000);
- 37 2. Concentrated Animal Feeding Operation (CAFO) Annual Program Report (9VAC25-31-  
38 200);
- 39 3. Pretreatment Program Annual Report (9VAC25-31-840);
- 40 4. Sewer Overflow and Bypass Incident Event Report (9VAC25-31-190 and ~~9VAC25-870-~~  
41 ~~430~~ 9VAC25-875-1000);
- 42 5. CWA § 316(b) Annual Reports (9VAC25-31-165); and
- 43 6. Municipal Separate Storm Sewer System (MS4) Program Reports (~~9VAC25-870-400~~  
44 9VAC25-875-970 and ~~9VAC25-870-440~~ 9VAC25-875-1010).

45 B. Facilities or entities seeking coverage under or termination from general permits and  
46 facilities or entities submitting stormwater certifications or waivers from VPDES permit  
47 requirements must electronically submit the minimum set of NPDES data for the following notices,  
48 certifications, and waivers if such reporting requirements are applicable:

49 1. Notice of intent (NOI) to discharge by facilities seeking coverage under a general  
50 VPDES permit rather than an individual VPDES permit, as described in 9VAC25-31-170  
51 B 2 and ~~9VAC25-870-410~~ 9VAC25-875-980;

52 2. Notice of termination (NOT), as described in 9VAC25-31-410 and ~~9VAC25-870-650~~  
53 9VAC25-875-1250;

54 3. No exposure certification (NOE), as described in 9VAC25-31-120 E 1 c; and

55 4. Certification in support of waiver for stormwater discharge associated with small  
56 construction activity, as described in ~~9VAC25-870-10~~ 9VAC25-875-20.

57 C. Industrial users located in municipalities without approved local pretreatment programs  
58 must electronically submit the minimum set of NPDES data for the following self-monitoring  
59 reports if such reporting requirements are applicable:

60 1. Periodic reports on continued compliance, as described in 9VAC25-31-840 E; and

61 2. Reporting requirements for industrial users not subject to categorical pretreatment  
62 standards, as described in 9VAC25-31-840 H.

63 D. The minimum set of NPDES data for VPDES-regulated facilities is identified in Appendix A  
64 to 40 CFR Part 127 as adopted by reference in 9VAC25-31-1030.

65 **9VAC25-31-980. Signature and certification standards for electronic reporting.**

66 The signatory and certification requirements identified in 40 CFR Part 3 (including, in all cases,  
67 40 CFR Part 3 Subpart D), 9VAC25-31-110 or ~~9VAC25-870-370~~ 9VAC25-875-940 as  
68 appropriate, and 9VAC25-31-840 L shall also apply to electronic submissions of information by  
69 VPDES permittees, facilities, and entities subject to this part.

70 **9VAC25-31-1010. Waivers from electronic reporting.**

71 A. VPDES permittees, facilities, and entities subject to this part must electronically submit the  
72 minimum set of NPDES data in compliance with this part, 40 CFR Part 3 (including, in all cases,  
73 40 CFR Part 3 Subpart D), 9VAC25-31-110 or ~~9VAC25-870-370~~ 9VAC25-875-940 as  
74 appropriate, and 9VAC25-31-840 L unless a waiver is granted in compliance with this section.

75 B. Temporary waivers from electronic reporting may be granted by the department for  
76 programs for which the department has received authorization to implement the NPDES program,  
77 in compliance with this section, to VPDES permittees, facilities, and entities subject to this part  
78 (see 9VAC25-31-950 A).

79 1. Each temporary waiver must not extend beyond five years. However, VPDES-regulated  
80 entities may reapply for a temporary waiver. It is the duty of the owner, operator, or duly  
81 authorized representative of the VPDES permittee, facility, and entity subject to this part  
82 to reapply for a new temporary waiver. The department cannot grant a temporary waiver  
83 to a VPDES-regulated entity without first receiving a temporary waiver request from the  
84 VPDES-regulated entity.

85 2. To apply for a temporary waiver, the owner, operator, or duly authorized representative  
86 of the VPDES permittee, facility, and entity subject to this part must submit the following  
87 information to their authorized VPDES program:

88 a. Facility name;

89 b. VPDES permit number (if applicable);

90 c. Facility address;

- 91 d. Name, address, and contact information for the owner, operator, or duly authorized  
92 facility representative;
- 93 e. Brief written statement regarding the basis for claiming such a temporary waiver;  
94 and
- 95 f. Any other information required by the department.
- 96 3. The department will determine whether to grant a temporary waiver. The department  
97 shall provide notice to the owner, operator, or duly authorized facility representative  
98 submitting a temporary waiver request in compliance with the requirements of subsection  
99 E of this section.
- 100 4. VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A)  
101 that have received a temporary waiver must continue to provide the minimum set of  
102 NPDES data (as well as other required information in compliance with statutes,  
103 regulations, the VPDES permit, another control mechanism, or an enforcement order) in  
104 hard-copy format to the department. The department shall electronically transfer these  
105 data to EPA in accordance with 40 CFR Part 127 Subpart C.
- 106 5. An approved temporary waiver is not transferrable.
- 107 C. Permanent waivers from electronic reporting may be granted by the department for  
108 programs for which the department has received authorization to implement the NPDES program,  
109 in compliance with this section, to VPDES permittees, facilities, and entities subject to this part  
110 (see 9VAC25-31-950 A).
- 111 1. Permanent waivers are only available to facilities and entities owned or operated by  
112 members of religious communities that choose not to use certain modern technologies  
113 (e.g., computers, electricity). The department cannot grant a permanent waiver to a  
114 VPDES-regulated entity without first receiving a permanent waiver request from the  
115 VPDES-regulated entity.
- 116 2. To apply for a permanent waiver, the owner, operator, or duly authorized representative  
117 of the VPDES permittee, facility, and entity subject to this part must submit the information  
118 listed in subdivision B 2 of this section to the department.
- 119 3. An approved permanent waiver is not transferrable.
- 120 4. VPDES permittees, facilities, and entities subject to this part (see 9VAC25-31-950 A)  
121 that have received a permanent waiver shall continue to provide the minimum set of  
122 NPDES data (as well as other required information in compliance with statutes,  
123 regulations, the VPDES permit, another control mechanism, or an enforcement order) in  
124 hard-copy format to the department. The department shall electronically transfer these  
125 data to EPA in accordance with 40 CFR Part 127 Subpart C.
- 126 D. Episodic waivers from electronic reporting may be granted by the department for programs  
127 for which the department has received authorization to implement the NPDES program, in  
128 compliance with this section, to VPDES permittees, facilities, and entities subject to this part (see  
129 9VAC25-31-950 A). The following conditions apply to episodic waivers.
- 130 1. No waiver request from the VPDES permittee, facility, or entity is required to obtain an  
131 episodic waiver from electronic reporting.
- 132 2. Episodic waivers are not transferrable.
- 133 3. Episodic waivers cannot last more than 60 days.
- 134 4. The department will decide if the episodic waiver provision allows facilities and entities  
135 to delay their electronic submissions or to send hard-copy (paper) submissions. Episodic  
136 waivers are only available to facilities and entities in the following circumstances:

- 137 a. Large scale emergencies involving catastrophic circumstances beyond the control  
 138 of the facilities, such as forces of nature (e.g., hurricanes, floods, fires, earthquakes)  
 139 or other national disasters. The department will make the determination if an episodic  
 140 waiver is warranted in this case and must receive the hard-copy (paper) submissions.
- 141 b. Prolonged electronic reporting system outages (i.e., outages longer than 96 hours).  
 142 The department, will make the determination if an episodic waiver is warranted in this  
 143 case and must receive the hard-copy (paper) submissions.

144 E. Responsibilities regarding review of waiver requests from VPDES permittees, facilities, and  
 145 entities subject to this part (see 9VAC25-31-950 A).

146 1. Under this section, a VPDES permittee, facility, or entity subject to this part (see  
 147 9VAC25-31-950 A) may seek a waiver from electronic reporting. The department shall  
 148 review the temporary or permanent waiver requests that it receives and either approve or  
 149 reject these requests within 120 days.

150 2. The department shall provide the permittee, facility, or entity with notice of the approval  
 151 or rejection of their temporary or permanent waiver request from electronic reporting.

152 3. The department shall electronically transfer to EPA the minimum set of NPDES data as  
 153 specified in Appendix A of 40 CFR Part 127, as adopted by reference in 9VAC25-31-1030,  
 154 that they receive from permittees, facilities, or entities with a waiver from electronic  
 155 reporting in accordance with 40 CFR 127.23.

156 4. Under subsection D of this section, episodic waivers from electronic reporting may be  
 157 granted by the department to VPDES permittees, facilities, and entities. The department  
 158 granting an episodic waiver must provide notice, individually or through means of mass  
 159 communication, regarding when such an episodic waiver is available, the facilities and  
 160 entities that may use the episodic waiver, the likely duration of the episodic waiver, and  
 161 any other directions regarding how facilities and entities should provide the minimum set  
 162 of NPDES data, as well as other required information in compliance with statutes,  
 163 regulations, the VPDES permit, another control mechanism, or an enforcement order, to  
 164 the department. No waiver request from the VPDES permittee, facility, or entity is required  
 165 to obtain an episodic waiver from electronic reporting. The department granting the  
 166 episodic waiver will determine whether to allow facilities and entities to delay their  
 167 electronic submissions for a short time (i.e., no more than 40 days) or to send hard-copy  
 168 (paper) submissions.

169 **9VAC25-31-1020. Implementation of electronic reporting requirements for VPDES**  
 170 **permittees, facilities, and entities subject to this part.**

171 A. VPDES permittees, facilities, and entities subject to this part, with the exception of those  
 172 covered by waivers under 9VAC25-31-1010, must electronically submit the following VPDES  
 173 information (reports, notices, waivers, and certifications) after the start dates listed in Table 1 of  
 174 this subsection. This part is not intended to undo existing requirements for electronic reporting.  
 175 Prior to this date, and independent of this part, the permittee may be required to report  
 176 electronically if specified by a particular permit or if required to do so by state law.

VPDES information	Start dates for electronic submissions
General Permit Reports	
Notices of Intent to discharge (NOIs) (9VAC25-31-170 B 2 and <del>9VAC25-870-410</del> <u>9VAC25-875-980</u> )	Start date will be provided in a schedule approved by the department.

Notices of Termination (NOTs) (9VAC25-31-410 and <del>9VAC25-870-650</del> ) <u>9VAC25-875-1250</u>	Start date will be provided in a schedule approved by the department.
No Exposure Certifications (NOEs) (9VAC25-31-120 E 1 c)	Start date will be provided in a schedule approved by the department.
Certifications in support of waiver for stormwater discharge associated with small construction activity ( <del>9VAC25-870-10</del> ) <u>(9VAC25-875-20)</u>	Start date will be provided in a schedule approved by the department.
Discharge Monitoring Reports (9VAC25-31-190 L 4 and <del>9VAC25-870-430 L 4</del> <u>9VAC25-875-1000 L 4</u> , as applicable)	
Individual VPDES Permit - Major Facility (9VAC25-31)	January 26, 2018
Individual VPDES Permit - Minor Facility (9VAC25-31)	January 26, 2018
Watershed General VPDES Permit - Nutrient Discharges (9VAC25-820)	March 26, 2018
General VPDES Permit - Industrial Stormwater Discharges (9VAC25-151)	July 26, 2018
All Other General VPDES Permits	Start dates will be provided in a schedule approved by the department.
Concentrated Animal Feeding Operation (CAFO) Annual Program Reports (9VAC25-31-200 E 4)	Start date will be provided in a schedule approved by the department.
Municipal Separate Storm Sewer System (MS4) Program Reports ( <del>9VAC25-870-400 D 7 e</del> ) <u>(9VAC25-875-970 D 7 and 9VAC25-870-440) 9VAC25-875-1010</u>	Start date will be provided in a schedule approved by the department.
POTW Pretreatment Program Annual Reports (9VAC25-31-840 I)	Start date will be provided in a schedule approved by the department.
Significant Industrial User Compliance Reports in Municipalities Without Approved Pretreatment Programs (9VAC25-31-840 E and H)	Start date will be provided in a schedule approved by the department.
Sewer Overflow or Bypass Event Reports (9VAC25-31-190 L and M and <del>9VAC25-870-430 L and M</del> ) <u>9VAC25-875-1000 M and N</u>	Start date will be provided in a schedule approved by the department.

CWA 316(b) Annual Reports (9VAC25-31-165 B 6 b)

Start date will be provided in a schedule approved by the department.

177 B. VPDES permittees, facilities, and entities subject to this part shall electronically submit the  
178 information listed in Table 1 of this section in compliance with this part and 40 CFR Part 3  
179 (including, in all cases, 40 CFR Part 3 Subpart D), 9VAC25-31-110 or ~~9VAC25-870-370~~ 9VAC25-  
180 875-940 as appropriate, and 9VAC25-31-840 L.

181 C. The department shall be the initial recipient as defined in 40 CFR 127.2(b) and as identified  
182 by EPA in 81 FR 62395 (September 9, 2016). VPDES permittees, facilities, and entities subject  
183 to this part shall electronically submit the information listed in Table 1 in this section to the  
184 department.

185 D. VPDES permittees, facilities, and entities subject to this part that have received a waiver  
186 from electronic reporting shall continue to provide the minimum set of NPDES data (as well as  
187 other required information in compliance with statutes, regulations, the VPDES permit, another  
188 control mechanism, or an enforcement order) to the department in accordance with 9VAC25-31-  
189 1010.

190 **9VAC25-31-1030. Adoption by reference of Appendix A to 40 CFR Part 127—Minimum Set**  
191 **of NPDES Data.**

192 A. Except as otherwise provided, the regulations of the U.S. Environmental Protection Agency  
193 set forth in Appendix A to 40 CFR Part 127 are hereby incorporated as part of this chapter and  
194 ~~9VAC25-870~~ 9VAC25-875.

195 B. In all locations in this chapter and ~~9VAC25-870~~ 9VAC25-875 where Appendix A to 40 CFR  
196 Part 127 is incorporated by reference, the following additions, modifications, and exceptions shall  
197 amend the incorporated text for the purpose of its incorporation into these regulations:

198 1. The department shall be the initial recipient as defined in 40 CFR 127.2(b) and as  
199 identified by EPA in 81 FR 62395 (September 9, 2016). The department will be the initial  
200 recipient for all NPDES data groups except for the sewage sludge/biosolids annual  
201 program reports (40 CFR Part 503) as Virginia is not authorized for the federal biosolids  
202 NPDES program.

203 2. NPDES-regulated entity shall be the same as VPDES-regulated entity.

204 3. The authorized<sup>89</sup> NPDES program shall be the department for those NPDES program  
205 components for which EPA has granted the state authorization.

206 **9VAC25-115-50. General permit.**

207 Any owner whose registration statement is accepted by the board shall comply with the  
208 requirements of the general permit and be subject to all requirements of 9VAC25-31-170 of the  
209 VPDES Permit Regulation.

210 General Permit No.: VAG52

211 Effective Date: July 24, 2021

212 Expiration Date: June 30, 2026

213 GENERAL PERMIT FOR SEAFOOD PROCESSING FACILITIES

214 AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE  
215 ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

216 In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the  
 217 State Water Control Law and regulations adopted pursuant to it, owners of seafood processing  
 218 facilities, other than mechanized clam processing facilities, are authorized to discharge to surface  
 219 waters within the boundaries of the Commonwealth of Virginia, except those specifically named  
 220 in board regulations that prohibit such discharges.

221 The authorized discharge shall be in accordance with the information submitted with the  
 222 registration statement, this cover page, Part I-Effluent Limitations and Monitoring Requirements,  
 223 Special Conditions, Part II-Stormwater Pollution Prevention Plans and Part III-Conditions  
 224 Applicable to All VPDES Permits, as set forth in this general permit.

225 Part I

226 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

227 1. SEAFOOD PROCESSING NOT LIMITED ELSEWHERE IN PART I. A.— SIC 2091,  
 228 2092, 5142 AND 5146 SOURCES EXCEPT MECHANIZED CLAM FACILITIES

229 During the period beginning with the permittee's coverage under this general permit and  
 230 lasting until the permit's expiration date, the permittee is authorized to discharge  
 231 wastewater from seafood processing not otherwise classified from outfall(s) \_\_\_\_\_.

232 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/YEAR	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/YEAR	Grab
TSS	NL	NL	NA	NA	NA	1/YEAR	Composite
Oil and Grease	NL	NL	NA	NA	NA	1/YEAR	Grab
Production	NA	NL	NA	NA	NA	1/YEAR	Measurement

233 NL = No limitation, monitoring required.

234 NA = Not applicable.

235 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

236 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
 237 cleanup) combined to form one representative sample, not to exceed eight grab samples.

238 Production = See Special Condition No. 5 (Part I B 5).

239 Samples shall be collected by the end of the calendar year and reported by the 10th of  
 240 January of the following calendar year on the facility's Discharge Monitoring Report (DMR). All  
 241 calculations shall be submitted with the DMR.

242 Part I

243 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

244 2. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—EXISTING  
 245 SOURCES PROCESSING MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY  
 246 ON ANY DAY

247 During the period beginning with the permittee's coverage under this general permit and  
 248 lasting until the permit's expiration date, the permittee is authorized to discharge  
 249 wastewater from conventional blue crab processing, from outfall(s) \_\_\_\_\_.

250 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	0.74	2.2	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.20	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

251 NL = No limitation, monitoring required.

252 NA = Not applicable.

253 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

254 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
 255 cleanup) combined to form one representative sample, not to exceed eight grab samples.

256 Production = See Special Condition No. 5 (Part I B 5).

257 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 258 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 259 (DMR). All calculations shall be submitted with the DMR.

260 Part I

261 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

262 3. CONVENTIONAL (HANDPICKED) BLUE CRAB PROCESSING—ALL NEW  
 263 SOURCES

264 During the period beginning with the permittee's coverage under this general permit and  
 265 lasting until the permit's expiration date, the permittee is authorized to discharge  
 266 wastewater from conventional blue crab processing, from outfall(s) \_\_\_\_\_.

267 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	0.15	0.30	NA	1/3 Months	Composite
TSS	NL	NL	0.45	0.90	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.065	0.13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

268 NL = No limitation, monitoring required.

269 NA = Not applicable.

270 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

271 Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

272 Production = See Special Condition No. 5 (Part I B 5).

273 Samples shall be collected by March 31, June 30, September 30, and December 31 and

274 reported by the 10th of the following month on the facility's Discharge Monitoring Report

275 (DMR). All calculations shall be submitted with the DMR.

276 Part I

277 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

278 4. MECHANIZED BLUE CRAB PROCESSING—ALL EXISTING SOURCES

279 During the period beginning with the permittee's coverage under this general permit and  
 280 lasting until the permit's expiration date, the permittee is authorized to discharge  
 281 wastewater from mechanized blue crab processing, from outfall(s) \_\_\_\_\_.

282 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kkg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		

Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	36	NA	1/3 Months	Composite
Oil and Grease	NL	NL	4.2	13	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

284 NL = No limitation, monitoring required.

285 NA = Not applicable.

286 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

287 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
288 cleanup) combined to form one representative sample, not to exceed eight grab samples.

289 Production = See Special Condition No. 5 (Part I B 5).

290 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
291 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
292 (DMR). All calculations shall be submitted with the DMR.

293 Part I

294 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

295 5. MECHANIZED BLUE CRAB PROCESSING—ALL NEW SOURCES

296 During the period beginning with the permittee's coverage under this general permit and  
297 lasting until the permit's expiration date, the permittee is authorized to discharge  
298 wastewater from mechanized blue crab processing, from outfall(s) \_\_\_\_\_.

299 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	2.5	5.0	NA	1/3 Months	Composite
TSS	NL	NL	6.3	13	NA	1/3 Months	Composite

Oil and Grease	NL	NL	1.3	2.6	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

300 NL = No limitation, monitoring required.

301 NA = Not applicable.

302 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

303 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
304 cleanup) combined to form one representative sample, not to exceed eight grab samples.

305 Production = See Special Condition No. 5 (Part I B 5).

306 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
307 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
308 (DMR). All calculations shall be submitted with the DMR.

309 Part I

310 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

311 6. NON-BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING  
312 MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

313 During the period beginning with the permittee's coverage under this general permit and  
314 lasting until the permit's expiration date, the permittee is authorized to discharge  
315 wastewater from non-breaded shrimp processing, from outfall(s) \_\_\_\_\_.

316 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	38	110	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

317 NL = No limitation, monitoring required.

318 NA = Not applicable.

319 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

320 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
 321 cleanup) combined to form one representative sample, not to exceed eight grab samples.  
 322 Production = See Special Condition No. 5 (Part I B 5).  
 323 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 324 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 325 (DMR). All calculations shall be submitted with the DMR.

326 Part I

327 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

328 7. NON-BREADED SHRIMP PROCESSING—ALL NEW SOURCES

329 During the period beginning with the permittee's coverage under this general permit and  
 330 lasting until the permit's expiration date, the permittee is authorized to discharge  
 331 wastewater from non-breaded shrimp processing, from outfall(s) \_\_\_\_\_.

332 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	25	63	NA	1/3 Months	Composite
TSS	NL	NL	10	25	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.6	4.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

333 NL = No limitation, monitoring required.

334 NA = Not applicable.

335 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

336 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
 337 cleanup) combined to form one representative sample, not to exceed eight grab samples.

338 Production = See Special Condition No. 5 (Part I B 5).

339 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 340 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 341 (DMR). All calculations shall be submitted with the DMR.

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Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

8. BREADED SHRIMP PROCESSING—EXISTING SOURCES PROCESSING MORE THAN 2,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	93	280	NA	1/3 Months	Composite
Oil and Grease	NL	NL	12	36	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

350 NL = No limitation, monitoring required.  
 351 NA = Not applicable.  
 352 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.  
 353 Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.  
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 355 Production = See Special Condition No. 5 (Part I B 5).  
 356 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 357 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 358 (DMR). All calculations shall be submitted with the DMR.

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Part I

A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

9. BREADED SHRIMP PROCESSING—ALL NEW SOURCES

During the period beginning with the permittee's coverage under this general permit and lasting until the permit's expiration date, the permittee is authorized to discharge wastewater from breaded shrimp processing, from outfall(s) \_\_\_\_\_.

Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	40	100	NA	1/3 Months	Composite
TSS	NL	NL	22	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.5	3.8	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

366 NL = No limitation, monitoring required.

367 NA = Not applicable.

368 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

369 Composite = Hourly grab samples taken over the duration of a processing cycle (including cleanup) combined to form one representative sample, not to exceed eight grab samples.

370 Production = See Special Condition No. 5 (Part I B 5).

371 Samples shall be collected by March 31, June 30, September 30, and December 31 and

372 reported by the 10th of the following month on the facility's Discharge Monitoring Report

373 (DMR). All calculations shall be submitted with the DMR.

375 Part I

376 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

377 10. TUNA PROCESSING—ALL EXISTING SOURCES

378 During the period beginning with the permittee's coverage under this general permit and  
 379 lasting until the permit's expiration date, the permittee is authorized to discharge  
 380 wastewater from tuna processing, from outfall(s) \_\_\_\_\_.

381 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate

pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	3.3	8.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.84	2.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

382 NL = No limitation, monitoring required.

383 NA = Not applicable.

384 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

385 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
386 cleanup) combined to form one representative sample, not to exceed eight grab samples.

387 Production = See Special Condition No. 5 (Part I B 5).

388 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
389 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
390 (DMR). All calculations shall be submitted with the DMR.

391 Part I

392 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

393 11. TUNA PROCESSING—ALL NEW SOURCES

394 During the period beginning with the permittee's coverage under this general permit and  
395 lasting until the permit's expiration date, the permittee is authorized to discharge  
396 wastewater from tuna processing, from outfall(s) \_\_\_\_\_.

397 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	8.1	20	NA	1/3 Months	Composite
TSS	NL	NL	3.0	7.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.76	1.9	NA	1/3 Months	Grab

Production	NA	NL	NA	NA	NA	1/3 Months	Measurement
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398 NL = No limitation, monitoring required.

399 NA = Not applicable.

400 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

401 Composite = Hourly grab samples taken over the duration of a processing cycle (including

402 cleanup) combined to form one representative sample, not to exceed eight grab samples.

403 Production = See Special Condition No. 5 (Part I B 5).

404 Samples shall be collected by March 31, June 30, September 30, and December 31 and

405 reported by the 10th of the following month on the facility's Discharge Monitoring Report

406 (DMR). All calculations shall be submitted with the DMR.

407 Part I

408 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

409 12. CONVENTIONAL BOTTOM FISH PROCESSING—EXISTING SOURCES

410 PROCESSING MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY

411 DAY

412 During the period beginning with the permittee's coverage under this general permit and

413 lasting until the permit's expiration date, the permittee is authorized to discharge

414 wastewater from conventional bottom fish processing, from outfall(s) \_\_\_\_\_.

415 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	2.0	3.6	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.55	1.0	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

416 NL = No limitation, monitoring required.

417 NA = Not applicable.

418 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

419 Composite = Hourly grab samples taken over the duration of a processing cycle (including

420 cleanup) combined to form one representative sample, not to exceed eight grab samples.

421 Production = See Special Condition No. 5 (Part I B 5).

422 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 423 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 424 (DMR). All calculations shall be submitted with the DMR.

425 Part I

426 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

427 13. CONVENTIONAL BOTTOM FISH PROCESSING—ALL NEW SOURCES

428 During the period beginning with the permittee's coverage under this general permit and  
 429 lasting until the permit's expiration date, the permittee is authorized to discharge  
 430 wastewater from conventional bottom fish processing, from outfall(s) \_\_\_\_\_.

431 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	0.71	1.2	NA	1/3 Months	Composite
TSS	NL	NL	0.73	1.5	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.042	0.077	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

432 NL = No limitation, monitoring required.

433 NA = Not applicable.

434 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

435 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
 436 cleanup) combined to form one representative sample, not to exceed eight grab samples.

437 Production = See Special Condition No. 5 (Part I B 5).

438 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 439 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 440 (DMR). All calculations shall be submitted with the DMR.

441 Part I

442 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

443 14. MECHANIZED BOTTOM FISH PROCESSING—ALL EXISTING SOURCES

444 During the period beginning with the permittee's coverage under this general permit and  
 445 lasting until the permit's expiration date, the permittee is authorized to discharge  
 446 wastewater from mechanized bottom fish processing, from outfall(s) \_\_\_\_\_.  
 447 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	12	22	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.9	9.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

448 NL = No limitation, monitoring required.  
 449 NA = Not applicable.  
 450 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.  
 451 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
 452 cleanup) combined to form one representative sample, not to exceed eight grab samples.  
 453 Production = See Special Condition No. 5 (Part I B 5).  
 454 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 455 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 456 (DMR). All calculations shall be submitted with the DMR.

457 Part I

458 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

459 15. MECHANIZED BOTTOM FISH PROCESSING—ALL NEW SOURCES

460 During the period beginning with the permittee's coverage under this general permit and  
 461 lasting until the permit's expiration date, the permittee is authorized to discharge  
 462 wastewater from mechanized bottom fish processing, from outfall(s) \_\_\_\_\_.  
 463 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		

Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	7.5	13	NA	1/3 Months	Composite
TSS	NL	NL	2.9	5.3	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.47	1.2	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

464 NL = No limitation, monitoring required.

465 NA = Not applicable.

466 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

467 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
468 cleanup) combined to form one representative sample, not to exceed eight grab samples.

469 Production = See Special Condition No. 5 (Part I B 5).

470 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
471 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
472 (DMR). All calculations shall be submitted with the DMR.

473 Part I

474 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

475 16. HAND-SHUCKED CLAM PROCESSING—EXISTING SOURCES PROCESSING  
476 MORE THAN 4,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

477 During the period beginning with the permittee's coverage under this general permit and  
478 lasting until the permit's expiration date, the permittee is authorized to discharge  
479 wastewater from hand-shucked clam processing, from outfall(s) \_\_\_\_\_.

480 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	18	59	NA	1/3 Months	Composite

Oil and Grease	NL	NL	0.23	0.60	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

481 NL = No limitation, monitoring required.

482 NA = Not applicable.

483 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

484 Composite = Hourly grab samples taken over the duration of a processing cycle (including

485 cleanup) combined to form one representative sample, not to exceed eight grab samples.

486 Production = See Special Condition No. 5 (Part I B 5).

487 Samples shall be collected by March 31, June 30, September 30, and December 31 and

488 reported by the 10th of the following month on the facility's Discharge Monitoring Report

489 (DMR). All calculations shall be submitted with the DMR.

490 Part I

491 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

492 17. HAND-SHUCKED CLAM PROCESSING—ALL NEW SOURCES

493 During the period beginning with the permittee's coverage under this general permit and

494 lasting until the permit's expiration date, the permittee is authorized to discharge

495 wastewater from hand-shucked clam processing, from outfall(s) \_\_\_\_\_.

496 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	17	55	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.21	0.56	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

497 NL = No limitation, monitoring required.

498 NA = Not applicable.

499 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

500 Composite = Hourly grab samples taken over the duration of a processing cycle (including

501 cleanup) combined to form one representative sample, not to exceed eight grab samples.

502 Production = See Special Condition No. 5 (Part I B 5).  
 503 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 504 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 505 (DMR). All calculations shall be submitted with the DMR.

506 Part I

507 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

508 18. HAND-SHUCKED OYSTER PROCESSING—EXISTING SOURCES PROCESSING  
 509 MORE THAN 1,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

510 During the period beginning with the permittee's coverage under this general permit and  
 511 lasting until the permit's expiration date, the permittee is authorized to discharge  
 512 wastewater from hand-shucked oyster processing, from outfall(s) \_\_\_\_\_.

513 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

514 NL = No limitation, monitoring required.

515 NA = Not applicable.

516 Raw material = The weight of oyster meat after shucking.

517 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

518 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
 519 cleanup) combined to form one representative sample, not to exceed eight grab samples.

520 Production = See Special Condition No. 5 (Part I B 5).

521 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 522 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 523 (DMR). All calculations shall be submitted with the DMR.

524 Part I

525 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

526 19. HAND-SHUCKED OYSTER PROCESSING—ALL NEW SOURCES

527 During the period beginning with the permittee's coverage under this general permit and  
 528 lasting until the permit's expiration date, the permittee is authorized to discharge  
 529 wastewater from hand-shucked oyster processing, from outfall(s) \_\_\_\_\_.  
 530 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	16	23	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.77	1.1	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

531 NL = No limitation, monitoring required.  
 532 NA = Not applicable.  
 533 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.  
 534 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
 535 cleanup) combined to form one representative sample, not to exceed eight grab samples.  
 536 Production = See Special Condition No. 5 (Part I B 5).  
 537 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 538 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 539 (DMR). All calculations shall be submitted with the DMR.

540 Part I

541 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

542 20. STEAMED AND CANNED OYSTER PROCESSING—ALL EXISTING SOURCES

543 During the period beginning with the permittee's coverage under this general permit and  
 544 lasting until the permit's expiration date, the permittee is authorized to discharge  
 545 wastewater from mechanized oyster processing, from outfall(s) \_\_\_\_\_.

546 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		

Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	190	270	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.7	2.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

547 NL = No limitation, monitoring required.

548 NA = Not applicable.

549 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

550 Composite = Hourly grab samples taken over the duration of a processing cycle (including

551 cleanup) combined to form one representative sample, not to exceed eight grab samples.

552 Production = See Special Condition No. 5 (Part I B 5).

553 Samples shall be collected by March 31, June 30, September 30, and December 31 and

554 reported by the 10th of the following month on the facility's Discharge Monitoring Report

555 (DMR). All calculations shall be submitted with the DMR.

556 Part I

557 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

558 21. STEAMED AND CANNED OYSTER PROCESSING—ALL NEW SOURCES

559 During the period beginning with the permittee's coverage under this general permit and  
 560 lasting until the permit's expiration date, the permittee is authorized to discharge  
 561 wastewater from mechanized oyster processing, from outfall(s) \_\_\_\_\_.

562 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	17	67	NA	1/3 Months	Composite
TSS	NL	NL	39	56	NA	1/3 Months	Composite

Oil and Grease	NL	NL	0.42	0.84	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

563 NL = No limitation, monitoring required.

564 NA = Not applicable.

565 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

566 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
567 cleanup) combined to form one representative sample, not to exceed eight grab samples.

568 Production = See Special Condition No. 5 (Part I B 5).

569 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
570 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
571 (DMR). All calculations shall be submitted with the DMR.

572 Part I

573 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

574 22. SCALLOP PROCESSING—ALL EXISTING SOURCES

575 During the period beginning with the permittee's coverage under this general permit and  
576 lasting until the permit's expiration date, the permittee is authorized to discharge  
577 wastewater from scallop processing, from outfall(s) \_\_\_\_\_.

578 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

579 NL = No limitation, monitoring required.

580 NA = Not applicable.

581 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

582 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
583 cleanup) combined to form one representative sample, not to exceed eight grab samples.

584 Production = See Special Condition No. 5 (Part I B 5).  
 585 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 586 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 587 (DMR). All calculations shall be submitted with the DMR.

588 Part I  
 589 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

590 23. SCALLOP PROCESSING—ALL NEW SOURCES

591 During the period beginning with the permittee's coverage under this general permit and  
 592 lasting until the permit's expiration date, the permittee is authorized to discharge  
 593 wastewater from scallop processing, from outfall(s) \_\_\_\_\_.

594 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	1.4	5.7	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.23	7.3	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

595 NL = No limitation, monitoring required.  
 596 NA = Not applicable.  
 597 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.  
 598 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
 599 cleanup) combined to form one representative sample, not to exceed eight grab samples.  
 600 Production = See Special Condition No. 5 (Part I B 5).  
 601 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 602 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 603 (DMR). All calculations shall be submitted with the DMR.

604 Part I  
 605 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

606 24. FARM-RAISED CATFISH PROCESSING—EXISTING SOURCES PROCESSING  
 607 MORE THAN 3,000 POUNDS OF RAW MATERIAL PER DAY ON ANY DAY

608 During the period beginning with the permittee's coverage under this general permit and  
 609 lasting until the permit's expiration date, the permittee is authorized to discharge  
 610 wastewater from farm-raised catfish processing, from outfall(s) \_\_\_\_\_.

611 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	9.2	28	NA	1/3 Months	Composite
Oil and Grease	NL	NL	3.4	10	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

612 NL = No limitation, monitoring required.

613 NA = Not applicable.

614 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

615 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
 616 cleanup) combined to form one representative sample, not to exceed eight grab samples.

617 Production = See Special Condition No. 5 (Part I B 5).

618 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
 619 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
 620 (DMR). All calculations shall be submitted with the DMR.

621 Part I

622 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

623 25. FARM-RAISED CATFISH PROCESSING—ALL NEW SOURCES

624 During the period beginning with the permittee's coverage under this general permit and  
 625 lasting until the permit's expiration date, the permittee is authorized to discharge  
 626 wastewater from farm-raised catfish processing, from outfall(s) \_\_\_\_\_.

627 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		

Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	2.3	4.6	NA	1/3 Months	Composite
TSS	NL	NL	5.7	11	NA	1/3 Months	Composite
Oil and Grease	NL	NL	0.45	0.90	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

628 NL = No limitation, monitoring required.

629 NA = Not applicable.

630 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

631 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
632 cleanup) combined to form one representative sample, not to exceed eight grab samples.

633 Production = See Special Condition No. 5 (Part I B 5).

634 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
635 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
636 (DMR). All calculations shall be submitted with the DMR.

637 Part I

638 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

639 26. HERRING PROCESSING—ALL

640 During the period beginning with the permittee's coverage under this general permit and  
641 lasting until the permit's expiration date, the permittee is authorized to discharge  
642 wastewater from herring processing, from outfall(s) \_\_\_\_\_.

643 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
TSS	NL	NL	24	32	NA	1/3 Months	Composite

Oil and Grease	NL	NL	10	27	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

644 NL = No limitation, monitoring required.

645 NA = Not applicable.

646 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

647 Composite = Hourly grab samples taken over the duration of a processing cycle (including

648 cleanup) combined to form one representative sample, not to exceed eight grab samples.

649 Production = See Special Condition No. 5 (Part I B 5).

650 Samples shall be collected by March 31, June 30, September 30, and December 31 and

651 reported by the 10th of the following month on the facility's Discharge Monitoring Report

652 (DMR). All calculations shall be submitted with the DMR.

653 Part I

654 A. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS

655 27. HERRING PROCESSING—ALL NEW SOURCES

656 During the period beginning with the permittee's coverage under this general permit and

657 lasting until the permit's expiration date, the permittee is authorized to discharge

658 wastewater from herring processing, from outfall(s) \_\_\_\_\_.

659 Such discharges shall be limited and monitored by the permittee as specified below:

EFFLUENT CHARACTERISTICS	MONITORING REQUIREMENTS kg/day		DISCHARGE LIMITATIONS kg/kg			Sample Frequency	Sample Type
	Monthly Avg	Daily Max	Monthly Avg	Daily Max	Daily Min		
Flow (MGD)	NA	NL	NA	NA	NA	1/3 Months	Estimate
pH (S.U.)	NA	NA	NA	9.0	6.0	1/3 Months	Grab
BOD <sub>5</sub>	NL	NL	15	16	NA	1/3 Months	Composite
TSS	NL	NL	5.2	7.0	NA	1/3 Months	Composite
Oil and Grease	NL	NL	1.1	2.9	NA	1/3 Months	Grab
Production	NA	NL	NA	NA	NA	1/3 Months	Measurement

660 NL = No limitation, monitoring required.

661 NA = Not applicable.

662 Grab = Individual grab sample is to be taken in the middle of a composite sampling period.

663 Composite = Hourly grab samples taken over the duration of a processing cycle (including  
664 cleanup) combined to form one representative sample, not to exceed eight grab samples.

665 Production = See Special Condition No. 5 (Part I B 5).

666 Samples shall be collected by March 31, June 30, September 30, and December 31 and  
667 reported by the 10th of the following month on the facility's Discharge Monitoring Report  
668 (DMR). All calculations shall be submitted with the DMR.

669 B. SPECIAL CONDITIONS APPLYING TO PART I A 1 THROUGH PART I A 27.

670 1. No sewage shall be discharged from a point source to surface waters at this facility  
671 except under the provisions of another VPDES permit specifically issued for that purpose.

672 2. There shall be no chemicals added to the water or waste to be discharged, other than  
673 those listed on the owner's accepted registration statement.

674 3. Wastewater should be reused or recycled to the maximum extent practicable.

675 4. The permittee shall comply with the following solids management plan:

676 a. There shall be no discharge of floating solids or visible foam in other than trace  
677 amounts.

678 b. All floors, machinery, conveyor belts, dock areas, etc. shall be dry swept or dry  
679 brushed prior to washdown.

680 c. All settling basins shall be cleaned frequently in order to achieve effective settling.

681 d. All solids resulting from the seafood processes covered under this general permit,  
682 other than oyster, clam, or scallop shells, shall be handled, stored, and disposed of so  
683 as to prevent a discharge to state waters of such solids or industrial wastes or other  
684 wastes from those solids.

685 e. The permittee shall install and properly maintain wastewater treatment necessary  
686 in order to remove organic solids present in the wastewater that may settle and  
687 accumulate on the substrate of the receiving waters in other than trace amounts.

688 f. All employees shall receive training relative to preventive measures to be taken to  
689 control the release of solids from the facility into surface waters.

690 5. Production to be reported and used in calculating effluent discharge levels in terms of  
691 kg/kg shall be the weight in kilograms of raw material processed, in the form in which it  
692 is received at the processing plant, on the day of effluent sampling, except for the hand-  
693 shucked oyster, steamed and canned oyster, and scallop processing subcategories, for  
694 which production shall mean the weight of oyster or scallop meat after processing. The  
695 effluent levels in terms of kg/kg shall be calculated by dividing the measured pollutant  
696 load in kg/day by the production level in kkg (thousands of kilograms).

697 6. The permittee shall notify the department as soon as they know or have reason to  
698 believe:

699 a. That any activity has occurred or will occur that would result in the discharge on a  
700 routine or frequent basis of any toxic pollutant that is not limited in the permit, if that  
701 discharge will exceed the highest of the following notification levels:

702 (1) One hundred micrograms per liter (100 µg/l) of the toxic pollutant;

703 (2) Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five  
704 hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4,6-  
705 dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

706 (3) Five times the maximum concentration value reported for that pollutant in the permit  
707 application; or

708 (4) The level established by the board.

- 709 b. That any activity has occurred or will occur that would result in any discharge on a  
 710 nonroutine or infrequent basis of a toxic pollutant that is not limited in the permit if that  
 711 discharge will exceed the highest of the following notification levels:  
 712 (1) Five hundred micrograms per liter (500 µg/l) of the toxic pollutant;  
 713 (2) One milligram per liter (1 mg/l) for antimony;  
 714 (3) Ten times the maximum concentration value reported for that pollutant in the permit  
 715 application; or  
 716 (4) The level established by the board.

717 7. Compliance reporting and recordkeeping under Part I A.

- 718 a. The quantification levels (QL) shall be less than or equal to the following  
 719 concentrations:

Effluent Parameter	Quantification Level
BOD	2 mg/l
TSS	1.0 mg/l
Oil and Grease	5.0 mg/l

720 The QL is defined as the lowest concentration used to calibrate a measurement  
 721 system in accordance with the procedures published for the test method.

722 b. Recording results. Any concentration below the QL used in the analysis shall be  
 723 recorded as "<QL" if it is less than the QL used in the analysis (the QL must be less  
 724 than or equal to the QL in subdivision 7 a of this subsection. Otherwise the numerical  
 725 value shall be recorded.

726 c. Monitoring results shall be recorded using the same number of significant digits as  
 727 listed in the permit. Regardless of the rounding conventions used by the permittee  
 728 (e.g., five always rounding up or to the nearest even number), the permittee shall use  
 729 the convention consistently, and shall ensure that consulting laboratories employed by  
 730 the permittee use the same convention.

731 8. The discharges authorized by this permit shall be controlled as necessary to meet water  
 732 quality standards in 9VAC25-260.

733 9. If a new process is added after coverage under the general permit is obtained, an  
 734 amended registration statement must be submitted at least 60 days prior to commencing  
 735 operation of the new process or a later submittal approved by the board.

736 10. Notice of termination.

737 a. The owner may terminate coverage under this general permit by filing a complete  
 738 notice of termination. The notice of termination may be filed after one or more of the  
 739 following conditions have been met:

740 (1) Operations have ceased at the facility and there are no longer discharges of  
 741 process wastewater or stormwater associated with the industrial activity;

742 (2) A new owner has assumed responsibility for the facility. A notice of termination  
 743 does not have to be submitted if a VPDES Change of Ownership Agreement Form has  
 744 been submitted;

745 (3) All discharges associated with this facility have been covered by an individual  
 746 VPDES permit or an alternative VPDES permit; or

747 (4) Termination of coverage is being requested for another reason, provided the board  
 748 agrees that coverage under this general permit is no longer needed.

- 749 b. The notice of termination shall contain the following information:  
750 (1) Owner's name, mailing address, telephone number, and email address (if  
751 available);  
752 (2) Facility name and location;  
753 (3) VPDES general permit registration number for the facility; and  
754 (4) The basis for submitting the notice of termination, including:  
755 (a) A statement indicating that a new owner has assumed responsibility for the facility;  
756 (b) A statement indicating that operations have ceased at the facility, and there are no  
757 longer discharges from the facility;  
758 (c) A statement indicating that all discharges have been covered by an individual  
759 VPDES permit or an alternative VPDES permit; or  
760 (d) A statement indicating that termination of coverage is being requested for another  
761 reason (state the reason).  
762 (5) The following certification: "I certify under penalty of law that all wastewater and  
763 stormwater discharges from the identified facility that are authorized by this VPDES  
764 general permit have been eliminated, or covered under a VPDES individual or  
765 alternative permit, or that I am no longer the owner of the facility, or permit coverage  
766 should be terminated for another reason listed above. I understand that by submitting  
767 this notice of termination, that I am no longer authorized to discharge seafood  
768 processing wastewater or, for facilities classified as SIC Code 2091 or 2092,  
769 stormwater associated with industrial activity in accordance with the general permit,  
770 and that discharging pollutants to surface waters is unlawful where the discharge is  
771 not authorized by a VPDES permit. I also understand that the submittal of this notice  
772 of termination does not release an owner from liability for any violations of this permit  
773 or the Clean Water Act."  
774 c. The notice of termination shall be submitted to the department and signed in  
775 accordance with Part III K.

776 Part II  
777 Stormwater Management

778 The following stormwater management requirements apply only to seafood processors  
779 classified as Standard Industrial Classifications (SIC) Codes 2091 and 2092.

780 A. Monitoring and inspections.

781 1. Quarterly visual monitoring of stormwater quality. The permittee shall perform and  
782 document visual monitoring of stormwater discharges associated with industrial activity  
783 from each outfall, except discharges waived in subdivision d of this subsection. The visual  
784 monitoring must be made during normal working hours, at least once in each of the  
785 following three-month periods: January through March, April through June, July through  
786 September, and October through December.

787 a. Samples will be in clean, colorless glass or plastic containers and examined in a  
788 well-lit area;

789 b. Samples will be collected within the first 30 minutes (or as soon thereafter as  
790 practical, but not to exceed three hours, provided that the permittee explains in the  
791 stormwater pollution prevention plan (SWPPP) why an examination during the first 30  
792 minutes was impractical) of when the runoff or snowmelt begins discharging. All such  
793 samples shall be collected from the discharge resulting from a storm event that results  
794 in an actual discharge from the site (defined as a "measurable storm event") providing

795 the interval from the preceding measurable storm event is at least 72 hours. The  
796 required 72-hour storm event interval is waived where the preceding measurable  
797 storm event did not result in a measurable discharge from the facility. The 72-hour  
798 storm event interval may also be waived where the permittee documents that less than  
799 a 72-hour interval is representative for local storm events during the season when  
800 sampling is being conducted.

801 c. The examination shall observe color, odor, clarity, floating solids, settled solids,  
802 suspended solids, foam, oil sheen, and other obvious indicators of stormwater  
803 pollution.

804 d. If no qualifying storm event resulted in discharge from the facility during a monitoring  
805 period, or adverse weather conditions create dangerous conditions for personnel  
806 during each measurable storm event during a monitoring period, visual monitoring is  
807 exempted provided this is documented in the SWPPP. Acceptable documentation  
808 includes dates and times the outfalls were viewed or sampling was attempted, national  
809 Climatic Data Center weather station data, local weather station data, facility rainfall  
810 logs, and other appropriate supporting data.

811 e. Representative outfalls – substantially identical stormwater discharges. If the facility  
812 has two or more outfalls that discharge substantially identical stormwater effluents,  
813 based on similarities of the industrial activities, significant materials, size of drainage  
814 areas, frequency of discharges, and stormwater management practices occurring  
815 within the drainage areas of the outfalls, the permittee may conduct quarterly visual  
816 monitoring on the stormwater discharges of just one representative outfall.

817 f. Visual monitoring reports shall be maintained on-site with the SWPPP. The report  
818 shall include:

819 (1) Outfall location;

820 (2) Monitoring date and time;

821 (3) Duration of storm event;

822 (4) Rainfall measurement or estimate (in inches) of the storm event that generated the  
823 discharge;

824 (5) Duration between the storm event sampled and the end of the previous measurable  
825 storm event;

826 (6) Monitoring personnel;

827 (7) Nature of the discharge (i.e., runoff or snow melt);

828 (8) Visual quality of the stormwater discharge, including observations of color, odor,  
829 clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other  
830 obvious indicators of stormwater pollution;

831 (9) Probable sources of any observed stormwater contamination;

832 (10) Why it was not possible to take the sample within the first 30 minutes (if  
833 applicable); and

834 (11) Documentation to support substantially identical outfalls (if applicable) required  
835 by Part II A 1 e.

836 g. Corrective action. Whenever the visual monitoring shows evidence of stormwater  
837 pollution, the SWPPP and stormwater control measures shall be updated per Part II  
838 B.

839 2. Routine facility inspections. Personnel who possess the knowledge and skills to assess  
840 conditions and activities that could impact stormwater quality at the facility and who can

841 also evaluate the effectiveness of control measures shall regularly inspect all areas of the  
842 facility where industrial materials or activities are exposed to stormwater.

843 a. Inspections include loading and unloading areas, storage areas, including  
844 associated containment areas, waste management units, vents and stacks emanating  
845 from industrial activities, spoiled product and broken product container hold areas,  
846 animal holding pens, staging areas, air pollution control equipment, areas where spills  
847 or leaks have occurred in the past three years, discharge points, and control  
848 measures.

849 b. At least one member of the pollution prevention team shall participate in the routine  
850 facility inspections.

851 c. The inspection frequency shall be specified in the SWPPP based upon a  
852 consideration of the level of industrial activity at the facility but shall be at a minimum  
853 of once per calendar quarter unless written approval is received from the department  
854 for less frequent intervals. Inspections shall be performed during operating hours. At  
855 least once each calendar year, the routine facility inspection shall be conducted during  
856 a period when a stormwater discharge is occurring.

857 d. Any deficiencies in the implementation of the SWPPP that are found shall be  
858 corrected as soon as practicable, but not later than within 60 days of the inspection,  
859 unless permission for a later date is granted in writing by the director. The results of  
860 the inspections shall be documented in the SWPPP and shall include at a minimum:

861 (1) The inspection date;

862 (2) The names of the inspectors;

863 (3) Weather information and a description of any discharges occurring at the time of  
864 the inspection;

865 (4) Any previously unidentified discharges of pollutants from the site;

866 (5) Any control measures needing maintenance or repairs;

867 (6) Any failed control measures that need replacement;

868 (7) Any incidents of noncompliance observed; and

869 (8) Any additional control measures needed to comply with the permit requirements.

870 e. Corrective action. Whenever the routine inspection shows evidence of stormwater  
871 pollution, the SWPPP and stormwater control measures shall be updated per Part II  
872 B.

873 f. The requirement for routine facility inspections is waived for facilities that have  
874 maintained an active VEEP E3/E4 status.

875 3. Nonstormwater discharges.

876 a. Allowable nonstormwater discharges. Discharges of certain sources of  
877 nonstormwater listed in Part II A 3 c are allowable discharges under this permit. All  
878 other nonstormwater discharges are not authorized and shall be either eliminated,  
879 covered under this permit, or covered under a separate VPDES permit.

880 b. Annual outfall inspection for unauthorized discharges. The SWPPP shall include  
881 documentation that all stormwater outfalls associated with industrial activity have been  
882 evaluated annually for the presence of unauthorized discharges. The documentation  
883 shall include:

884 (1) The date of the evaluation;

885 (2) A description of the evaluation criteria used;

- 886 (3) A list of the outfalls or on-site drainage points that were directly observed during  
887 the evaluation;
- 888 (4) A description of the results of the evaluation for the presence of unauthorized  
889 discharges; and
- 890 (5) The actions taken to eliminate unauthorized discharges if any were identified.
- 891 c. The following nonstormwater discharges are authorized by this permit:
- 892 (1) Discharges from emergency firefighting activities;
- 893 (2) Fire hydrant flushing, managed in a manner to avoid an instream impact;
- 894 (3) Potable water, including water line flushing, managed in a manner to avoid an  
895 instream impact;
- 896 (4) Uncontaminated condensate from air conditioners, coolers, and other compressors  
897 and from the outside storage of refrigerated gases or liquids;
- 898 (5) Irrigation drainage;
- 899 (6) Landscape watering provided all pesticides, herbicides, and fertilizers have been  
900 applied in accordance with the approved labeling;
- 901 (7) Pavement wash waters where no detergents or hazardous cleaning products are  
902 used and no spills or leaks of toxic or hazardous materials have occurred, unless all  
903 spilled material has been removed. Pavement wash waters shall be managed in a  
904 manner to avoid an instream impact;
- 905 (8) Routine external building washdown that does not use detergents or hazardous  
906 cleaning products;
- 907 (9) Uncontaminated groundwater or spring water;
- 908 (10) Foundation or footing drains where flows are not contaminated with process  
909 materials; and
- 910 (11) Incidental windblown mist from cooling towers that collects on rooftops or adjacent  
911 portions of the facility, but not intentional discharges from the cooling tower (e.g.,  
912 "piped" cooling tower blowdown or drains).
- 913 B. Corrective actions. The permittee shall take corrective action whenever:
- 914 1. Routine facility inspections, visual monitoring, inspections by local, state, or federal  
915 officials, or any other process, observation, or event result in a determination that  
916 modifications to the stormwater control measures are necessary to meet the permit  
917 requirements;
- 918 2. The department determines, or the permittee becomes aware, that the stormwater  
919 control measures are not stringent enough for the discharge to meet applicable water  
920 quality standards.
- 921 3. The permittee shall review the SWPPP and modify it as necessary to address any  
922 deficiencies. Revisions to the SWPPP shall be completed within 60 days following the  
923 discovery of the deficiency. When control measures need to be modified or added,  
924 implementation shall be completed before the next anticipated storm event if possible, but  
925 no later than 60 days after the deficiency is discovered, or as otherwise provided or  
926 approved by the department. In cases where construction is necessary to implement  
927 control measures, the permittee shall include a schedule in the SWPPP that provides for  
928 the completion of the control measures as expeditiously as practicable, but no later than  
929 three years after the deficiency is discovered. Where a construction compliance schedule  
930 is included in the SWPPP, the SWPPP shall include appropriate nonstructural and  
931 temporary controls to be implemented in the affected portion of the facility prior to

932 completion of the permanent control measure. The amount of time taken to modify a  
933 control measure or implement additional control measures shall be documented in the  
934 SWPPP.

935 4. Any corrective actions taken shall be documented and retained with the SWPPP.  
936 Reports of corrective actions shall be signed in accordance with Part III K.

937 C. Stormwater pollution prevention plans (SWPPPs). An SWPPP shall be developed and  
938 implemented for the facility covered by this permit, which has stormwater discharges associated  
939 with industrial activity and is classified under SIC Code 2091 or 2092. The SWPPP is intended to  
940 document the selection, design, and installation of control measures, including BMPs, to minimize  
941 the pollutants in all stormwater discharges from the facility and to meet applicable effluent  
942 limitations and water quality standards.

943 The SWPPP requirements of this general permit may be fulfilled, in part, by incorporating by  
944 reference other plans or documents such as an erosion and sediment control (ESC) plan, a spill  
945 prevention control and countermeasure (SPCC) plan developed for the facility under § 311 of the  
946 Clean Water Act or best management practices (BMP) programs otherwise required for the facility  
947 provided that the incorporated plan meets or exceeds the plan requirements of Part II C 2  
948 (Contents of the SWPPP). If an ESC plan is being incorporated by reference, it shall have been  
949 approved by the locality in which the activity is to occur or by another appropriate plan approving  
950 authority authorized under the ~~Erosion and Sediment Control Regulations, 9VAC25-840~~ Virginia  
951 Erosion and Stormwater Management Regulation, 9VAC25-875. All plans incorporated by  
952 reference into the SWPPP become enforceable under this permit. If a plan incorporated by  
953 reference does not contain all of the required elements of the SWPPP of Part III C 2, the permittee  
954 shall develop the missing SWPPP elements and include them in the required plan.

955 1. Deadlines for SWPPP preparation and compliance.

956 a. Owners of facilities that were covered under the 2016 Seafood Processing Facilities  
957 General Permit who are continuing coverage under this general permit shall update  
958 and implement any revisions to the SWPPP within 60 days of the board granting  
959 coverage under this permit.

960 b. Owners of new facilities, facilities previously covered by an expiring individual  
961 permit, and existing facilities not currently covered by a VPDES permit that elect to be  
962 covered under this general permit shall prepare and implement the SWPPP within 60  
963 days of the board granting coverage under this permit.

964 c. Where the owner of an existing facility that is covered by this permit changes, the  
965 new owner of the facility must update and implement any revisions to the SWPPP  
966 within 60 days of the ownership change.

967 d. Upon a showing of good cause, the director may establish a later date in writing for  
968 preparation of and compliance with the SWPPP.

969 2. Contents of the SWPPP. The contents of the SWPPP shall include, at a minimum, the  
970 following items:

971 a. Pollution prevention team. The SWPPP shall identify the staff individuals by name  
972 or title who comprise the facility's stormwater pollution prevention team. The pollution  
973 prevention team is responsible for assisting the facility or plant manager in developing,  
974 implementing, maintaining, revising, and ensuring compliance with the facility's  
975 SWPPP. Specific responsibilities of each staff individual on the team shall be identified  
976 and listed.

977 b. Site description. The SWPPP shall include the following:

978 (1) A description of the nature of the industrial activities at the facility.

979 (2) Site map. A site map identifying the following:

- 980 (a) The boundaries of the property and the size of the property in acres;  
981 (b) The location and extent of significant structures and impervious surfaces;  
982 (c) Locations of all stormwater conveyances, including ditches, pipes, swales, and  
983 inlets, and the directions of stormwater flow, using arrows to indicate which direction  
984 stormwater will flow;  
985 (d) Locations of stormwater control measures, including BMPs;  
986 (e) Locations of all water bodies receiving discharges from the site, including wetlands;  
987 (f) Locations of identified potential pollutant sources identified in Part II C 2 c;  
988 (g) Locations where significant spills or leaks identified under Part II C 2 c (3) have  
989 occurred;  
990 (h) Locations of stormwater outfalls, monitoring locations, an approximate outline of  
991 the area draining to each outfall, the drainage area of each outfall in acres, the  
992 longitude and latitude of each outfall, the location of any municipal separate storm  
993 sewer system (MS4) conveyance receiving discharge from the facility, and each outfall  
994 identified with a unique numerical identification codes. For example: Outfall Number  
995 001, Outfall Number 002, etc.;
- 996 (i) Location and description of all nonstormwater discharges;  
997 (j) Location of any storage piles containing salt;  
998 (k) Location and source of suspected run-on to the site from an adjacent property if  
999 the run-on is suspected of containing significant quantities of pollutants; and  
1000 (l) Locations of vents and stacks from cooking, drying, and similar operations; dry  
1001 product vacuum transfer lines; animal holding pens; spoiled product; and broken  
1002 product container storage area if exposed to precipitation or runoff.
- 1003 c. Summary of potential pollutant sources. The SWPPP shall identify each separate  
1004 area at the facility where industrial materials or activities are exposed to stormwater.  
1005 Industrial materials or activities include material handling equipment or activities,  
1006 industrial machinery, raw materials, industrial production and processes, intermediate  
1007 products, byproducts, final products, waste products, and application and storage of  
1008 pest control chemicals used on facility grounds. Material handling activities include the  
1009 storage, loading and unloading, transportation, disposal, or conveyance of any raw  
1010 material, intermediate product, final product or waste product. For each separate area  
1011 identified, the description shall include:
- 1012 (1) Activities in area. A list of the industrial activities exposed to stormwater;  
1013 (2) Pollutants. A list of the pollutants, pollutant constituents, or industrial chemicals  
1014 associated with each industrial activity that could potentially be exposed to stormwater.  
1015 The pollutant list shall include all significant materials handled, treated, stored, or  
1016 disposed that have been exposed to stormwater in the three years prior to the date  
1017 the SWPPP was prepared or amended. The list shall include any hazardous  
1018 substances or oil at the facility.
- 1019 (3) Spills and leaks. The SWPPP shall clearly identify areas where potential spills and  
1020 leaks that can contribute pollutants to stormwater discharges can occur and their  
1021 corresponding outfalls. The SWPPP shall include a list of significant spills and leaks  
1022 of toxic or hazardous pollutants that actually occurred at exposed areas, or that  
1023 drained to a stormwater conveyance during the three-year period prior to the date this  
1024 SWPPP was prepared or amended. The list shall be updated within 60 days of the  
1025 incident if significant spills or leaks occur in exposed areas of the facility during the  
1026 term of the permit.

1027 d. Control measure considerations. Control measures shall be implemented for all the  
1028 areas identified in Part II C 2 c (Summary of potential pollutant sources) to prevent or  
1029 control pollutants in stormwater discharges from the facility. If applicable, regulated  
1030 stormwater discharges from the facility include stormwater run-on that commingles  
1031 with stormwater discharges associated with industrial activity at the facility. The  
1032 SWPPP shall describe the type, location, and implementation of all control measures  
1033 for each area where industrial materials or activities are exposed to stormwater.  
1034 Selection of control measures shall take into consideration:

1035 (1) That preventing stormwater from coming into contact with polluting materials is  
1036 generally more effective, and less costly, than trying to remove pollutants from  
1037 stormwater;

1038 (2) Control measures generally must be used in combination with each other for most  
1039 effective water quality protection;

1040 (3) Assessing the type and quantity of pollutants, including their potential to impact  
1041 receiving water quality, is critical to designing effective control measures;

1042 (4) That minimizing impervious areas at the facility can reduce runoff and improve  
1043 groundwater recharge and stream base flows in local streams (however, care must be  
1044 taken to avoid groundwater contamination);

1045 (5) Flow attenuation by use of open vegetated swales and natural depressions can  
1046 reduce instream impacts of erosive flows;

1047 (6) Conservation or restoration of riparian buffers will help protect streams from  
1048 stormwater runoff and improve water quality; and

1049 (7) Treatment interceptors (e.g., swirl separators and sand filters) may be appropriate  
1050 in some instances to minimize the discharge of pollutants.

1051 e. Control measures. The permittee shall implement the following types of control  
1052 measures to prevent and control pollutants in the stormwater discharges from the  
1053 facility, unless it can be demonstrated and documented that such controls are not  
1054 relevant to the discharges.

1055 (1) Good housekeeping. The permittee shall keep clean all exposed areas of the  
1056 facility that are potential sources of pollutants to stormwater discharges. The permittee  
1057 shall perform the following good housekeeping measures to minimize pollutant  
1058 discharges:

1059 (a) The SWPPP shall include a schedule for regular pickup and disposal of waste  
1060 materials along with routine inspections for leaks and conditions of drums, tanks, and  
1061 containers;

1062 (b) Sweep or vacuum as feasible;

1063 (c) Store materials in containers constructed of appropriate materials;

1064 (d) Manage all waste containers to prevent a discharge of pollutants;

1065 (e) Minimize the potential for waste, garbage, and floatable debris to be discharged by  
1066 keeping areas exposed to stormwater free of such materials or by intercepting such  
1067 materials prior to discharge; and

1068 (f) Implement BMPs to eliminate stormwater discharges of plastics.

1069 (2) Eliminating and minimizing exposure. To the extent practicable, manufacturing,  
1070 processing, and material storage areas, including loading and unloading, storage,  
1071 disposal, cleaning, maintenance, and fueling operations, shall be located inside, or  
1072 protected by a storm-resistant covering to prevent exposure to rain, snow, snowmelt,  
1073 and runoff. Unless infeasible, facilities shall implement the following:

- 1074 (a) Use grading, berming, or curbing to prevent runoff of contaminated flows and divert  
1075 run-on away from potential sources of pollutants;
- 1076 (b) Locate materials, equipment, and activities so that potential leaks and spills are  
1077 contained, or able to be contained, or diverted before discharge;
- 1078 (c) Clean up spills and leaks immediately, upon discovery of the spills or leaks, using  
1079 dry methods (e.g., absorbents) to prevent the discharge of pollutants;
- 1080 (d) Store leaking vehicles and equipment indoors, or if stored outdoors, use drip pans  
1081 and adsorbents;
- 1082 (e) Utilize appropriate spill or overflow protections equipment;
- 1083 (f) Perform all vehicle maintenance or equipment cleaning operations indoors, under  
1084 cover, or in bermed areas that prevent runoff and run-on and also capture any  
1085 overspray; and
- 1086 (g) Drain fluids from equipment and vehicles that will be decommissioned, and for any  
1087 equipment and vehicles that remain unused for extended periods of time, inspect at  
1088 least monthly for leaks.
- 1089 (3) Preventive maintenance. The SWPPP shall include preventive maintenance that  
1090 includes a description of procedures and a regular schedule for inspection of the  
1091 following:
- 1092 (a) All control measures that includes a description of the back-up practices that are  
1093 in place should a runoff event occur while a control measure is off line; and
- 1094 (b) Testing, maintenance, and repairing of all industrial equipment and systems to  
1095 avoid situations that could result in leaks, spills, and other releases of pollutants in  
1096 stormwater discharged from the facility.
- 1097 (4) Spill prevention and response procedures. The SWPPP shall describe the  
1098 procedures that will be followed for preventing and responding to spills and leaks,  
1099 including:
- 1100 (a) Preventive measures, such as barriers between material storage and traffic areas,  
1101 secondary containment provisions, and procedures for material storage and handling;
- 1102 (b) Response procedures, including notification of appropriate facility personnel,  
1103 emergency agencies, and regulatory agencies and procedures for stopping,  
1104 containing, and cleaning up spills. Measures for cleaning up hazardous material spills  
1105 or leaks shall be consistent with applicable the Resource Conservation and Recovery  
1106 Act regulations at 40 CFR Part 264 and 40 CFR Part 265. Employees who may cause,  
1107 detect, or respond to a spill or leak shall be trained in these procedures and have  
1108 necessary spill response equipment available. If possible, one of these individuals  
1109 shall be a member of the pollution prevention team;
- 1110 (c) Procedures for plainly labeling containers (e.g., "used oil," "spent solvents," and  
1111 "fertilizers and pesticides") that could be susceptible to spillage or leakage to  
1112 encourage proper handling and facilitate rapid response if spills or leaks occur; and
- 1113 (d) Contact information for individuals and agencies that must be notified in the event  
1114 of a spill shall be included in the SWPPP and maintained in other locations where it  
1115 will be readily available.
- 1116 (5) Employee training. The permittee shall implement a stormwater employee training  
1117 program for the facility. The SWPPP shall include a schedule for all training and shall  
1118 document all training sessions and the employees who received the training. Training  
1119 shall be provided at least annually for all employees who work in areas where industrial  
1120 materials or activities are exposed to stormwater, and for employees who are

1121 responsible for implementing activities identified in the SWPPP (e.g., inspectors and  
1122 maintenance personnel). The training shall cover the components and goals of the  
1123 SWPPP and include such topics as spill response, good housekeeping, material  
1124 management practices, BMP operation and maintenance and pest control. The  
1125 SWPPP shall include a summary of any training performed.

1126 (6) Sediment and erosion control. The SWPPP shall identify areas at the facility that,  
1127 due to topography, land disturbance (e.g., construction, landscaping, site grading), or  
1128 other factors, have a potential for soil erosion. The permittee shall identify and  
1129 implement structural, vegetative, or stabilization control measures to prevent or control  
1130 on-site and off-site erosion and sedimentation. Flow velocity dissipation devices shall  
1131 be placed at discharge locations and along the length of any outfall channel if the flows  
1132 would otherwise create erosive conditions.

1133 (7) Management of runoff. The plan shall describe the stormwater runoff management  
1134 practices (i.e., permanent structural control measures) for the facility. These types of  
1135 control measures shall be used to divert, infiltrate, reuse, or otherwise reduce  
1136 pollutants in stormwater discharges from the site.

1137 Structural control measures may require a separate permit under § 404 of the federal  
1138 Clean Water Act and the Virginia Water Protection Permit Program Regulation  
1139 (9VAC25-210) before installation begins.

1140 3. Signature and SWPPP review.

1141 a. Signature and location. The SWPPP, including revisions to the SWPPP to document  
1142 any corrective actions taken as required by Part II B, shall be signed in accordance  
1143 with Part III K, dated, and retained on-site at the facility covered by this permit. All other  
1144 changes to the SWPPP, and other permit compliance documentation, must be signed  
1145 and dated by the person preparing the change or documentation.

1146 b. Availability. The permittee shall retain a copy of the current SWPPP required by this  
1147 permit at the facility, and it shall be immediately available to the department, EPA, or  
1148 the operator of an MS4 receiving discharges from the site at the time of an on-site  
1149 inspection or upon request.

1150 c. Required modifications. The permittee shall modify the SWPPP whenever  
1151 necessary to address all corrective actions required by Part II B. Changes to the  
1152 SWPPP shall be made in accordance with the corrective action deadlines in Part II B  
1153 and shall be signed and dated in accordance with Part III K. The director may notify  
1154 the permittee at any time that the SWPPP, control measures, or other components of  
1155 the facility's stormwater program do not meet one or more of the requirements of this  
1156 permit. The notification shall identify specific provisions of the permit that are not being  
1157 met and may include required modifications to the stormwater program, additional  
1158 monitoring requirements, and special reporting requirements. The permittee shall  
1159 make any required changes to the SWPPP within 60 days of receipt of such  
1160 notification, unless permission for a later date is granted in writing by the director, and  
1161 shall submit a written certification to the director that the requested changes have been  
1162 made.

1163 4. Maintaining an updated SWPPP. The permittee shall review and amend the SWPPP  
1164 as appropriate whenever:

1165 a. There is construction or a change in design, operation, or maintenance at the facility  
1166 that has an effect on the discharge, or the potential for the discharge, of pollutants  
1167 from the facility;

- 1168 b. Routine inspections or visual monitoring determine that there are deficiencies in the  
1169 control measures, including BMPs;
- 1170 c. Inspections by local, state, or federal officials determine that modifications to the  
1171 SWPPP are necessary;
- 1172 d. There is a significant spill, leak or other release at the facility; or
- 1173 e. There is an unauthorized discharge from the facility.
- 1174 f. SWPPP modifications shall be made within 60 calendar days after the discovery,  
1175 observation, or event requiring a SWPPP modification. Implementation of new or  
1176 modified control measures shall be initiated before the next storm event if possible,  
1177 but no later than 60 days after discovery, or as otherwise provided or approved by the  
1178 director. The amount of time taken to modify a control measure or implement additional  
1179 control measures shall be documented in the SWPPP.
- 1180 g. If the SWPPP modification is based on a significant spill, leak, release, or  
1181 unauthorized discharge, include a description and date of the incident, the  
1182 circumstances leading to the incident, actions taken in response to the incident, and  
1183 measures to prevent the recurrence of such releases. Unauthorized discharges are  
1184 subject to the reporting requirements of Part III G of this permit.

1185 Part III

1186 Conditions Applicable to All VPDES Permits

1187 A. Monitoring.

- 1188 1. Samples and measurements taken as required by this permit shall be representative of  
1189 the monitored activity.
- 1190 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part  
1191 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless  
1192 other procedures have been specified in this permit.
- 1193 3. The permittee shall periodically calibrate and perform maintenance procedures on all  
1194 monitoring and analytical instrumentation at intervals that will ensure accuracy of  
1195 measurements.
- 1196 4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-  
1197 45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-46,  
1198 Accreditation for Commercial Environmental Laboratories.

1199 B. Records.

- 1200 1. Records of monitoring information shall include:
- 1201 a. The date, exact place, and time of sampling or measurements;
- 1202 b. The individuals who performed the sampling or measurements;
- 1203 c. The dates and times analyses were performed;
- 1204 d. The individuals who performed the analyses;
- 1205 e. The analytical techniques or methods used; and
- 1206 f. The results of such analyses.
- 1207 2. The permittee shall retain records of all monitoring information, including all calibration  
1208 and maintenance records and all original strip chart recordings for continuous monitoring  
1209 instrumentation, copies of all reports required by this permit, and records of all data used  
1210 to complete the registration statement for this permit, for a period of at least three years  
1211 from the date of the sample, measurement, report or request for coverage. This period of  
1212 retention shall be extended automatically during the course of any unresolved litigation

1213 regarding the regulated activity or regarding control standards applicable to the permittee,  
1214 or as requested by the board.

1215 C. Reporting monitoring results.

1216 1. The permittee shall submit the results of the monitoring required by this permit not later  
1217 than the 10th day of the month after monitoring takes place, unless another reporting  
1218 schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the  
1219 department's regional office.

1220 2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on  
1221 forms provided, approved or specified by the department. Following notification from the  
1222 department of the start date for the required electronic submission of monitoring reports,  
1223 as provided for in 9VAC25-31-1020, such forms and reports submitted after that date shall  
1224 be electronically submitted to the department in compliance with this section and 9VAC25-  
1225 31-1020. There shall be at least three months' notice provided between the notification  
1226 from the department and the date after which such forms and reports must be submitted  
1227 electronically.

1228 3. If the permittee monitors any pollutant specifically addressed by this permit more  
1229 frequently than required by this permit using test procedures approved under 40 CFR Part  
1230 136 or using other test procedures approved by the U.S. Environmental Protection Agency  
1231 or using procedures specified in this permit, the results of this monitoring shall be included  
1232 in the calculation and reporting of the data submitted in the DMR or reporting form  
1233 specified by the department.

1234 4. Calculations for all limitations that require averaging of measurements shall utilize an  
1235 arithmetic mean unless otherwise specified in this permit.

1236 D. Duty to provide information. The permittee shall furnish to the department, within a  
1237 reasonable time, any information that the board may request to determine whether cause exists  
1238 for modifying, revoking and reissuing, or terminating coverage under this permit or to determine  
1239 compliance with this permit. The board may require the permittee to furnish, upon request, such  
1240 plans, specifications, and other pertinent information as may be necessary to determine the effect  
1241 of the wastes from the permittee's discharge on the quality of state waters, or such other  
1242 information as may be necessary to accomplish the purposes of the State Water Control Law.  
1243 The permittee shall also furnish to the department, upon request, copies of records required to be  
1244 kept by this permit.

1245 E. Compliance schedule reports. Reports of compliance or noncompliance with, or any  
1246 progress reports on, interim and final requirements contained in any compliance schedule of this  
1247 permit shall be submitted no later than 14 days following each schedule date.

1248 F. Unauthorized discharges. Except in compliance with this permit or another permit issued  
1249 by the board, it shall be unlawful for any person to:

1250 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or  
1251 deleterious substances; or

1252 2. Otherwise alter the physical, chemical or biological properties of such state waters and  
1253 make them detrimental to the public health, or to animal or aquatic life, or to the use of  
1254 such waters for domestic or industrial consumption, or for recreation, or for other uses.

1255 G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a  
1256 discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into  
1257 or upon state waters in violation of Part III F (Unauthorized discharges); or who discharges or  
1258 causes or allows a discharge that may reasonably be expected to enter state waters in violation  
1259 of Part III F, shall notify (see Part III I 3) the department of the discharge immediately upon  
1260 discovery of the discharge, but in no case later than 24 hours after said discovery. A written report

1261 of the unauthorized discharge shall be submitted to the department within five days of discovery  
1262 of the discharge. The written report shall contain:

- 1263 1. A description of the nature and location of the discharge;
- 1264 2. The cause of the discharge;
- 1265 3. The date on which the discharge occurred;
- 1266 4. The length of time that the discharge continued;
- 1267 5. The volume of the discharge;
- 1268 6. If the discharge is continuing, how long it is expected to continue;
- 1269 7. If the discharge is continuing, what the expected total volume of the discharge will be;
- 1270 and
- 1271 8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present
- 1272 discharge or any future discharges not authorized by this permit.

1273 Discharges reportable to the department under the immediate reporting requirements of other  
1274 regulations are exempted from this requirement.

1275 H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge  
1276 including a bypass or upset, should occur from a treatment works and the discharge enters or  
1277 could be expected to enter state waters, the permittee shall promptly notify, in no case later than  
1278 24 hours, the department by telephone after the discovery of the discharge. This notification shall  
1279 provide all available details of the incident, including any adverse effects on aquatic life and the  
1280 known number of fish killed. The permittee shall reduce the report to writing and shall submit it to  
1281 the department within five days of discovery of the discharge in accordance with Part III I 2.  
1282 Unusual and extraordinary discharges include any discharge resulting from:

- 1283 1. Unusual spillage of materials resulting directly or indirectly from processing operations;
- 1284 2. Breakdown of processing or accessory equipment;
- 1285 3. Failure or taking out of service some or all of the treatment works; and
- 1286 4. Flooding or other acts of nature.

1287 I. Reports of noncompliance.

1288 1. The permittee shall report any noncompliance that may adversely affect state waters or  
1289 may endanger public health.

1290 a. An oral report shall be provided within 24 hours from the time the permittee becomes  
1291 aware of the circumstances. The following shall be included as information that shall  
1292 be reported within 24 hours under this subdivision:

- 1293 (1) Any unanticipated bypass; and
- 1294 (2) Any upset that causes a discharge to surface waters.

1295 b. A written report shall be submitted within five days and shall contain:

- 1296 (1) A description of the noncompliance and its cause;
- 1297 (2) The period of noncompliance, including exact dates and times, and if the  
1298 noncompliance has not been corrected, the anticipated time it is expected to continue;
- 1299 and
- 1300 (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the  
1301 noncompliance.

1302 The board may waive the written report on a case-by-case basis for reports of  
1303 noncompliance under Part III I if the oral report has been received within 24 hours and no  
1304 adverse impact on state waters has been reported.

1305 2. The permittee shall report all instances of noncompliance not reported under Part III I 1  
1306 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall  
1307 contain the information listed in Part III I 2.

1308 3. The immediate (within 24 hours) reports required in Part III G, H, and I may be made to  
1309 the department's regional office. Reports may be made by telephone, or online at  
1310 <https://www.deq.virginia.gov/our-programs/pollution-response>.

1311 For reports outside normal working hours, leave a message and this shall fulfill the  
1312 immediate reporting requirement. For emergencies, the Virginia Department of  
1313 Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.

1314 4. Where the permittee becomes aware that it failed to submit any relevant facts in a permit  
1315 registration statement or submitted incorrect information in a permit registration statement  
1316 or in any report to the department, it shall promptly submit such facts or information.

1317 J. Notice of planned changes.

1318 1. The permittee shall give notice to the department as soon as possible of any planned  
1319 physical alterations or additions to the permitted facility. Notice is required only when:

1320 a. The permittee plans alteration or addition to any building, structure, facility, or  
1321 installation from which there is or may be a discharge of pollutants, the construction of  
1322 which commenced:

1323 (1) After promulgation of standards of performance under § 306 of the federal Clean  
1324 Water Act that are applicable to such source; or

1325 (2) After proposal of standards of performance in accordance with § 306 of the federal  
1326 Clean Water Act that are applicable to such source, but only if the standards are  
1327 promulgated in accordance with § 306 within 120 days of their proposal;

1328 b. The alteration or addition could significantly change the nature or increase the  
1329 quantity of pollutants discharged. This notification applies to pollutants that are subject  
1330 neither to effluent limitations nor to notification requirements specified under Part I B  
1331 6; or

1332 c. The alteration or addition results in a significant change in the permittee's sludge  
1333 use or disposal practices and such alteration, addition, or change may justify the  
1334 application of permit conditions that are different from or absent in the existing permit,  
1335 including notification of additional use or disposal sites not reported during the permit  
1336 registration process or not reported pursuant to an approved land application plan.

1337 2. The permittee shall give advance notice to the department of any planned changes in  
1338 the permitted facility or activity that may result in noncompliance with permit requirements.

1339 K. Signatory requirements.

1340 1. Registration statement. All registration statements shall be signed as follows:

1341 a. For a corporation: by a responsible corporate officer. For the purposes of this  
1342 section, a responsible corporate officer means: (i) a president, secretary, treasurer, or  
1343 vice-president of the corporation in charge of a principal business function, or any other  
1344 person who performs similar policy-making or decision-making functions for the  
1345 corporation, or (ii) the manager of one or more manufacturing, production, or operating  
1346 facilities provided the manager is authorized to make management decisions that  
1347 govern the operation of the regulated facility, including having the explicit or implicit  
1348 duty of making capital investment recommendations, and initiating and directing other  
1349 comprehensive measures to assure long term environmental compliance with  
1350 environmental laws and regulations; the manager can ensure that the necessary  
1351 systems are established or other actions taken to gather complete and accurate

1352 information for permit application requirements; and where authority to sign  
1353 documents has been assigned or delegated to the manager in accordance with  
1354 corporate procedures;

1355 b. For a partnership or sole proprietorship: by a general partner or the proprietor,  
1356 respectively; or

1357 c. For a municipality, state, federal, or other public agency: by either a principal  
1358 executive officer or ranking elected official. For purposes of this section, a principal  
1359 executive officer of a public agency includes: (i) the chief executive officer of the  
1360 agency or (ii) a senior executive officer having responsibility for the overall operations  
1361 of a principal geographic unit of the agency.

1362 2. Reports and other information. All reports required by permits, and other information  
1363 requested by the board, shall be signed by a person described in Part III K 1 or by a duly  
1364 authorized representative of that person. A person is a duly authorized representative only  
1365 if:

1366 a. The authorization is made in writing by a person described in Part III K 1;

1367 b. The authorization specifies either an individual or a position having responsibility for  
1368 the overall operation of the regulated facility or activity such as the position of plant  
1369 manager, operator of a well or a well field, superintendent, position of equivalent  
1370 responsibility, or an individual or position having overall responsibility for  
1371 environmental matters for the company. A duly authorized representative may thus be  
1372 either a named individual or any individual occupying a named position; and

1373 c. The written authorization is submitted to the department.

1374 3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate  
1375 because a different individual or position has responsibility for the overall operation of the  
1376 facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted  
1377 to the department prior to or together with any reports or information to be signed by an  
1378 authorized representative.

1379 4. Certification. Any person signing a document under Part III K 1 or 2 shall make the  
1380 following certification:

1381 "I certify under penalty of law that this document and all attachments were prepared  
1382 under my direction or supervision in accordance with a system designed to assure that  
1383 qualified personnel properly gather and evaluate the information submitted. Based on  
1384 my inquiry of the person or persons who manage the system, or those persons directly  
1385 responsible for gathering the information, the information submitted is, to the best of  
1386 my knowledge and belief, true, accurate, and complete. I am aware that there are  
1387 significant penalties for submitting false information, including the possibility of fine  
1388 and imprisonment for knowing violations."

1389 L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit  
1390 noncompliance constitutes a violation of the State Water Control Law and the federal Clean Water  
1391 Act, except that noncompliance with certain provisions of this permit may constitute a violation of  
1392 the State Water Control Law but not the federal Clean Water Act. Permit noncompliance is  
1393 grounds for enforcement action; for permit coverage termination or denial of a permit renewal.

1394 The permittee shall comply with effluent standards or prohibitions established under § 307(a)  
1395 of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish  
1396 these standards, even if this permit has not yet been modified to incorporate the requirement.

1397 M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after  
1398 the expiration date of this permit, the permittee shall submit a new registration statement at least  
1399 60 days before the expiration date of the existing permit, unless permission for a later date has

1400 been granted by the board. The board shall not grant permission for registration statements to be  
1401 submitted later than the expiration date of the existing permit.

1402 N. Effect of a permit. This permit does not convey any property rights in either real or personal  
1403 property or any exclusive privileges, nor does it authorize any injury to private property or invasion  
1404 of personal rights or any infringement of federal, state or local laws or regulations.

1405 O. State law. Nothing in this permit shall be construed to preclude the institution of any legal  
1406 action under, or relieve the permittee from any responsibilities, liabilities, or penalties established  
1407 pursuant to, any other state law or regulation or under authority preserved by § 510 of the federal  
1408 Clean Water Act. Except as provided in permit conditions in Part III U (Bypass) and Part III V  
1409 (Upset) nothing in this permit shall be construed to relieve the permittee from civil and criminal  
1410 penalties for noncompliance.

1411 P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude  
1412 the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or  
1413 penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-  
1414 44.34:23 of the State Water Control Law.

1415 Q. Proper operation and maintenance. The permittee shall at all times properly operate and  
1416 maintain all facilities and systems of treatment and control (and related appurtenances) that are  
1417 installed or used by the permittee to achieve compliance with the conditions of this permit. Proper  
1418 operation and maintenance also includes effective plant performance, adequate funding,  
1419 adequate staffing, and adequate laboratory and process controls, including appropriate quality  
1420 assurance procedures. This provision requires the operation of back-up or auxiliary facilities or  
1421 similar systems that are installed by the permittee only when the operation is necessary to achieve  
1422 compliance with the conditions of this permit.

1423 R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of  
1424 treatment or management of pollutants shall be disposed of in a manner so as to prevent any  
1425 pollutant from such materials from entering state waters.

1426 S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any  
1427 discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of  
1428 adversely affecting human health or the environment.

1429 T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an  
1430 enforcement action that it would have been necessary to halt or reduce the permitted activity in  
1431 order to maintain compliance with the conditions of this permit.

1432 U. Bypass.

1433 1. "Bypass" means the intentional diversion of waste streams from any portion of a  
1434 treatment facility. The permittee may allow any bypass to occur that does not cause  
1435 effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure  
1436 efficient operation. These bypasses are not subject to the provisions of Part III U 2 and U  
1437 3.

1438 2. Notice.

1439 a. Anticipated bypass. If the permittee knows in advance of the need for a bypass,  
1440 prior notice shall be submitted if possible at least 10 days before the date of the  
1441 bypass.

1442 b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass  
1443 as required in Part III I (Reports of noncompliance).

1444 3. Prohibition of bypass.

1445 a. Bypass is prohibited, and the board may take enforcement action against a  
1446 permittee for bypass, unless:

- 1447 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property  
1448 damage;
- 1449 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary  
1450 treatment facilities, retention of untreated wastes, or maintenance during normal  
1451 periods of equipment downtime. This condition is not satisfied if adequate back-up  
1452 equipment should have been installed in the exercise of reasonable engineering  
1453 judgment to prevent a bypass that occurred during normal periods of equipment  
1454 downtime or preventive maintenance; and
- 1455 (3) The permittee submitted notices as required under Part III U 2.
- 1456 b. The board may approve an anticipated bypass, after considering its adverse effects,  
1457 if the board determines that it will meet the three conditions listed in Part III U 3 a.

1458 V. Upset.

- 1459 1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action  
1460 brought for noncompliance with technology-based permit effluent limitations if the  
1461 requirements of Part III V 2 are met. A determination made during administrative review  
1462 of claims that noncompliance was caused by upset, and before an action for  
1463 noncompliance, is not a final administrative action subject to judicial review.
- 1464 2. A permittee that wishes to establish the affirmative defense of upset shall demonstrate,  
1465 through properly signed, contemporaneous operating logs or other relevant evidence that:
- 1466 a. An upset occurred and that the permittee can identify the causes of the upset;  
1467 b. The permitted facility was at the time being properly operated;  
1468 c. The permittee submitted notice of the upset as required in Part III I; and  
1469 d. The permittee complied with any remedial measures required under Part III S.
- 1470 3. In any enforcement proceeding, the permittee seeking to establish the occurrence of an  
1471 upset has the burden of proof.

1472 W. Inspection and entry. The permittee shall allow the director or an authorized representative  
1473 (including an authorized contractor acting as a representative of the administrator), upon  
1474 presentation of credentials and other documents as may be required by law, to:

- 1475 1. Enter upon the permittee's premises where a regulated facility or activity is located or  
1476 conducted or where records must be kept under the conditions of this permit;
- 1477 2. Have access to and copy, at reasonable times, any records that must be kept under the  
1478 conditions of this permit;
- 1479 3. Inspect at reasonable times any facilities, equipment (including monitoring and control  
1480 equipment), practices, or operations regulated or required under this permit; and
- 1481 4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance  
1482 or as otherwise authorized by the federal Clean Water Act and the State Water Control  
1483 Law, any substances or parameters at any location.

1484 For purposes of this section, the time for inspection shall be deemed reasonable during  
1485 regular business hours or whenever the facility is discharging. Nothing contained herein shall  
1486 make an inspection unreasonable during an emergency.

1487 X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause.  
1488 The filing of a request by the permittee for a permit modification, revocation and reissuance, or  
1489 termination, or a notification of planned changes or anticipated noncompliance does not stay any  
1490 permit condition.

1491 Y. Transfer of permit coverage.

- 1492 1. Permit coverage is not transferable to any person except after notice to the department.

- 1493 2. Coverage under this permit may be automatically transferred to a new permittee if:  
1494 a. The current permittee notifies the department within 30 days of the transfer of the  
1495 title to the facility or property unless permission for a later date has been granted by  
1496 the board;  
1497 b. The notice includes a written agreement between the existing and new permittees  
1498 containing a specific date for transfer of permit responsibility, coverage, and liability  
1499 between them; and  
1500 c. The board does not notify the existing permittee and the proposed new permittee of  
1501 its intent to deny the permittee coverage under the permit. If this notice is not received,  
1502 the transfer is effective on the date specified in the agreement mentioned in Part III Y  
1503 2.

1504 Z. Severability. The provisions of this permit are severable, and if any provision of this permit  
1505 or the application of any provision of this permit to any circumstance is held invalid, the application  
1506 of such provision to other circumstances and the remainder of this permit shall not be affected  
1507 thereby.

1508  
1509 **9VAC25-151-60. Registration statement and stormwater pollution prevention plan**  
1510 **(SWPPP).**

1511 A. An owner seeking coverage under this general permit shall submit a complete VPDES  
1512 general permit registration statement in accordance with this section, which shall serve as a notice  
1513 of intent for coverage under the VPDES general permit regulation for discharges of stormwater  
1514 associated with industrial activity.

1515 Any owner that was authorized to discharge under the industrial stormwater general permit  
1516 that became effective on July 1, 2019, and that intends to continue coverage under this general  
1517 permit shall review and update the stormwater pollution prevention plan (SWPPP) to meet all  
1518 provisions of the general permit (9VAC25-151-70 et seq.) within 90 days of the department  
1519 granting coverage under this permit. Owners of new facilities, facilities previously covered by an  
1520 expiring individual permit, and existing facilities not currently covered by a VPDES permit that  
1521 wish to obtain coverage under this general permit shall prepare and implement a written SWPPP  
1522 for the facility in accordance with the general permit (9VAC25-151-70 et seq.) before submitting  
1523 the registration statement.

1524 B. Deadlines for submitting registration statements.

1525 1. Existing facilities.

1526 a. Any owner that was authorized to discharge under the industrial stormwater general  
1527 permit that became effective on July 1, 2019, and that intends to continue coverage  
1528 under this general permit shall submit a complete registration statement to the  
1529 department on or before May 1, 2024.

1530 b. Any owner covered by a VPDES individual permit for stormwater discharges  
1531 associated with industrial activity that is proposing to be covered under this general  
1532 permit shall submit a complete registration statement at least 240 days before the  
1533 expiration date of the VPDES individual permit.

1534 c. Any owner of an existing facility with stormwater discharges associated with  
1535 industrial activity, not currently covered by a VPDES permit, that is proposing to be  
1536 covered under this general permit shall submit a complete registration statement to  
1537 the department.

- 1538 2. New facilities. Any owner proposing a new discharge of stormwater associated with  
1539 industrial activity shall submit a complete registration statement at least 60 days before  
1540 the date planned for the beginning of the industrial activity at the facility.
- 1541 3. New owners of existing facilities. Where the owner of an existing facility that is covered  
1542 by this permit changes, the new owner of the facility shall submit a complete registration  
1543 statement within 30 days of the ownership change.
- 1544 4. Late registration statements. Registration statements for existing facilities covered  
1545 under subdivision 1 a of this subsection will be accepted after June 30, 2024, but  
1546 authorization to discharge will not be retroactive.
- 1547 C. The required registration statement shall contain the following information:
- 1548 1. Facility name and mailing address, owner name and mailing address, telephone  
1549 number, and email address;
- 1550 2. Facility street address (if different from mailing address) or location (if the facility location  
1551 does not have a mailing address);
- 1552 3. Facility operator (local contact) name, address, telephone number, and email address  
1553 (if available) if different than owner;
- 1554 4. The nature of the business conducted at the facility to be covered under this general  
1555 permit, including a description of the primary industrial activity and all other industrial  
1556 activities that take place;
- 1557 5. The receiving waters of the industrial activity discharges;
- 1558 6. A determination of whether the facility will discharge to an MS4. If the facility discharges  
1559 to an MS4, the facility owner must notify the owner of the MS4 of the existence of the  
1560 discharge information and include that notification with the registration statement. The  
1561 notice shall include the following information: the name of the facility, a contact person  
1562 and telephone number, the location of the discharge, the nature of the discharge, and the  
1563 facility's VPDES general permit number (if assigned by DEQ);
- 1564 7. The permit number for any existing VPDES permit assigned to the facility;
- 1565 8. An indication that an SWPPP has been prepared before submitting this registration  
1566 statement by the owner of a new facility, a facility previously covered by an expiring  
1567 individual permit, or an existing facility not currently covered by a VPDES permit;
- 1568 9. For each outfall, identification of up to four four-digit Standard Industrial Classification  
1569 (SIC) Codes or two-letter Industrial Activity Codes that best represent the principal  
1570 products or services rendered by the facility and major colocated industrial activities (two-  
1571 letter Industrial Activity Codes are: HZ – hazardous waste treatment, storage, or disposal  
1572 facilities; LF – landfills and disposal facilities that receive or have received any industrial  
1573 wastes; SE – steam electric power generating facilities; or TW – treatment works treating  
1574 domestic sewage);
- 1575 10. Identification of all applicable industrial sectors in this permit (as designated in Table  
1576 50-2) that cover the industrial activities at the facility, and major colocated industrial  
1577 activities to be covered under this permit, and the stormwater outfalls associated with each  
1578 industrial sector.
- 1579 a. If the facility is a landfill (sector L), state the type of landfill (i.e., MSWLF (municipal  
1580 solid waste landfill), CDD (construction debris and demolition), or other), and which  
1581 outfalls (if any) receive contaminated stormwater runoff;
- 1582 b. If the facility is a timber products operation (sector A), state which outfalls (if any)  
1583 receive discharges from wet decking areas, and which outfalls (if any) collect runoff

- 1584 from areas where mulch dyeing operations (including loading, transporting, and  
1585 storage) occur;
- 1586 c. For all facilities, state any outfalls receiving discharges from coal storage piles;
- 1587 d. If the facility manufactures asphalt paving and roofing materials (sector D), state  
1588 which outfalls (if any) receive discharges from areas where production of asphalt  
1589 paving emulsions or roofing emulsions occurs;
- 1590 e. If the facility manufactures cement (sector E), state which outfalls (if any) receive  
1591 discharges from material storage piles;
- 1592 f. If a scrap recycling and waste recycling facility (sector N - SIC 5093) only receives  
1593 source-separated recyclable materials, state which outfalls (if any) receive discharges  
1594 from this activity. List the metals (if any) that are received; or
- 1595 g. For primary airports subject to 40 CFR 449 (1,000 or more annual departures of  
1596 nonpropeller aircraft), list the average deicing season and state which outfalls (if any)  
1597 receive discharges from deicing or anti-icing operations;
- 1598 11. List the following facility area information:
- 1599 a. The total area of the facility in acres;
- 1600 b. The total area of industrial activity of the facility in acres;
- 1601 c. The total impervious surface area of the industrial activity of the facility in acres;
- 1602 d. The impervious and total areas in acres draining to each industrial activity outfall at  
1603 the facility. Outfalls shall be numbered using a unique numerical identification code for  
1604 each outfall. For example: Outfall Number 001 or Outfall Number 002; and
- 1605 e. The latitude and longitude of each outfall location;
- 1606 12. A site map depicting the following shall be included with the registration statement:
- 1607 a. The property boundaries;
- 1608 b. All industrial activity outfalls labeled with unique numerical identification for each  
1609 outfall. Outfall numbering shall be the same as that used for the facility area  
1610 information in subdivision 11 of this subsection; and
- 1611 c. All water bodies or MS4 conveyances, labeled with names if applicable, receiving  
1612 stormwater discharges from the site;
- 1613 13. Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan  
1614 (November 29, 2010) states that wasteloads for future growth for new facilities in the  
1615 Chesapeake Bay watershed with industrial stormwater discharges cannot exceed the  
1616 nutrient and sediment loadings that were discharged before the land was developed for  
1617 the industrial activity. For purposes of this permit regulation, facilities that begin  
1618 construction after June 30, 2024, must be consistent with this requirement to be eligible  
1619 for coverage under this general permit.
- 1620 If this is a new facility that began construction after June 30, 2024, in the Chesapeake Bay  
1621 watershed and is applying for first time general permit coverage, attach documentation to  
1622 the registration statement to demonstrate:
- 1623 a. That the total phosphorus load does not exceed the greater of (i) the total  
1624 phosphorus load that was discharged from the industrial area of the property before  
1625 the land was developed for the new industrial activity or (ii) 0.41 pounds per acre per  
1626 year (~~VSMP~~ water quality design criteria, 9VAC25-875-580). The documentation must  
1627 include the measures and controls that were employed to meet this requirement, along  
1628 with the supporting calculations. The owner may include additional nonindustrial land  
1629 on the site as part of any plan to comply with the no net increase requirement.

1630 Consistent with the definition of "site," this includes adjacent land used in connection  
1631 with the facility. Compliance with the water quality design criteria may be determined  
1632 utilizing the Virginia Runoff Reduction Method or another equivalent methodology  
1633 approved by the department. Design specifications and pollutant removal efficiencies  
1634 for specific BMPs can be found on the Virginia Stormwater BMP Clearinghouse  
1635 website; or

1636 b. The owner may consider utilization of any pollutant trading or offset program in  
1637 accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia,  
1638 governing trading and offsetting, to meet the no net increase requirement;

1639 14. State Corporation Commission entity identification number if the facility is required to  
1640 obtain an entity identification number by law; and

1641 15. The following certification: "I certify under penalty of law that this document and all  
1642 attachments were prepared under my direction or supervision in accordance with a system  
1643 designed to assure that qualified personnel properly gather and evaluate the information  
1644 submitted. Based on my inquiry of the person or persons who manage the system, or  
1645 those persons directly responsible for gathering the information, the information submitted  
1646 is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that  
1647 there are significant penalties for submitting false information, including the possibility of  
1648 fine and imprisonment for knowing violations."

1649 D. The registration statement shall be signed in accordance with 9VAC25-31-110 A.

1650 E. Where to submit. The registration statement may be delivered to the department by either  
1651 postal or electronic mail and shall be submitted to the DEQ regional office serving the area where  
1652 the industrial facility is located. Following notification from the department of the start date for the  
1653 required electronic submission of Notices of Intent to Discharge forms (i.e., registration  
1654 statements) as provided for in 9VAC25-31-1020, such forms submitted after that date shall be  
1655 electronically submitted to the department in compliance with this section and 9VAC25-31-1020.  
1656 There shall be at least a three-month notice provided between the notification from the department  
1657 and the date after which such forms must be submitted electronically.

1658 **9VAC25-151-70. General permit.**

1659 Any owner whose registration statement is accepted by the director will receive the following  
1660 general permit and shall comply with the requirements therein and be subject to the VPDES  
1661 Permit Regulation, 9VAC25-31. Facilities with colocated industrial activities shall comply with all  
1662 applicable monitoring and SWPPP requirements of each industrial activity sector of this chapter  
1663 in which a colocated industrial activity is described. All pages of 9VAC25-151-70 and 9VAC25-  
1664 151-80 apply to all stormwater discharges associated with industrial activity covered under this  
1665 general permit. Not all pages of 9VAC25-151-90 et seq. will apply to every permittee. The  
1666 determination of which pages apply will be based on an evaluation of the regulated activities  
1667 located at the facility.

1668 General Permit No.: VAR05

1669 Effective Date: July 1, 2024

1670 Expiration Date: June 30, 2029

1671 VPDES GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH  
1672 INDUSTRIAL ACTIVITY

1673 AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE  
1674 ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

1675 In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the  
1676 State Water Control Law and regulations adopted pursuant thereto, owners of facilities with  
1677 stormwater discharges associated with industrial activity are authorized to discharge to surface  
1678 waters within the boundaries of the Commonwealth of Virginia, except those waters specifically  
1679 named in board regulation that prohibit such discharges.

1680 The authorized discharge shall be in accordance with this cover page, the registration  
1681 statement, Part I-Effluent Limitations, Monitoring Requirements and Special Conditions, Part II-  
1682 Conditions Applicable to All VPDES Permits, Part III-Stormwater Pollution Prevention Plan, Part  
1683 IV-Sector-Specific Permit Requirements, and Part V-Chesapeake Bay Total Maximum Daily Load  
1684 Compliance as set forth in this general permit.

1685 Part I

1686 Effluent Limitations, Monitoring Requirements and Special Conditions

1687 A. Effluent limitations and monitoring requirements.

1688 There are four individual and separate categories of monitoring requirements that a facility  
1689 may be subject to under this permit: (i) quarterly visual monitoring; (ii) benchmark monitoring of  
1690 discharges associated with specific industrial activities; (iii) compliance monitoring for discharges  
1691 subject to numerical effluent limitations; and (iv) monitoring of discharges to impaired waters, both  
1692 those with an approved TMDL and those without an approved TMDL. The monitoring  
1693 requirements and numeric effluent limitations applicable to a facility depend on the types of  
1694 industrial activities generating stormwater runoff from the facility, and for TMDL monitoring, the  
1695 location of the facility's discharge. Part IV of the permit identifies monitoring requirements  
1696 applicable to specific sectors of industrial activity. The permittee shall review Part I A 1 and Part  
1697 IV of the permit to determine which monitoring requirements and numeric limitations apply to the  
1698 permittee's facility. Unless otherwise specified, limitations and monitoring requirements under  
1699 Part I A 1 and Part IV are additive.

1700 Sector-specific monitoring requirements and limitations are applied discharge by discharge at  
1701 facilities with colocated activities. Where stormwater from the colocated activities is commingled,  
1702 the monitoring requirements and limitations are additive. Where more than one numeric limitation  
1703 for a specific parameter applies to a discharge, compliance with the more restrictive limitation is  
1704 required. Where benchmark, numerical effluent limitations, or TMDL monitoring requirements for  
1705 a monitoring period overlap, the permittee may use a single sample to satisfy monitoring  
1706 requirements.

1707 1. Types of monitoring requirements and limitations.

1708 a. Quarterly visual monitoring. The requirements and procedures for quarterly visual  
1709 monitoring are applicable to all facilities covered under this permit, regardless of the  
1710 facility's sector of industrial activity.

1711 (1) The permittee shall perform and document a quarterly visual examination of a  
1712 stormwater discharge associated with industrial activity from each outfall, except  
1713 discharges exempted in Part I A 3 or A 4. The visual examinations shall be made at  
1714 least once in each of the following three-month periods: January through March, April  
1715 through June, July through September, and October through December. The visual  
1716 examination shall be made during normal working hours, where practicable, and when  
1717 considerations for safety and feasibility allow. If no storm event resulted in runoff from

1718 the facility during a monitoring quarter, the permittee is excused from visual monitoring  
 1719 for that quarter provided that documentation is included with the monitoring records  
 1720 indicating that no runoff occurred.

1721 (2) Samples shall be collected in accordance with Part I A 2. Sample examination shall  
 1722 document observations of color, odor, clarity, floating solids, settled solids, suspended  
 1723 solids, foam, oil sheen, and other obvious indicators of stormwater pollution. The visual  
 1724 examination of the sample shall be conducted in a well-lit area. No analytical tests are  
 1725 required to be performed on the samples.

1726 (3) The visual examination documentation shall be maintained on-site with the  
 1727 SWPPP. The documentation shall include the outfall location, the examination date  
 1728 and time, examination staff, the nature of the discharge (i.e., runoff or snow melt),  
 1729 visual quality of the stormwater discharge (including observations of color, odor,  
 1730 clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other  
 1731 obvious indicators of stormwater pollution), and probable sources of any observed  
 1732 stormwater contamination.

1733 b. Benchmark monitoring of discharges associated with specific industrial activities.  
 1734 Table 70-1 identifies the specific industrial sectors subject to the benchmark  
 1735 monitoring requirements of this permit and the industry-specific pollutants of concern.  
 1736 The permittee shall refer to the tables found in the individual sectors in Part IV for  
 1737 benchmark monitoring concentration values. Colocated industrial activities at the  
 1738 facility that are described in more than one sector in Part IV shall comply with all  
 1739 applicable benchmark monitoring requirements from each sector.

1740 The results of benchmark monitoring are primarily for the permittee to use to determine  
 1741 the overall effectiveness of the SWPPP in controlling the discharge of pollutants to  
 1742 receiving waters. Benchmark concentration values, included in Part IV of this permit,  
 1743 are not effluent limitations. Exceedance of a benchmark concentration does not  
 1744 constitute a violation of this permit and does not show that violation of a water quality  
 1745 standard has occurred; however, it does signal that modifications to the SWPPP are  
 1746 necessary, unless justification is provided in a routine facility inspection. In addition,  
 1747 exceedance of benchmark concentrations may identify facilities that would be more  
 1748 appropriately covered under an individual, or alternative general permit where more  
 1749 specific pollution prevention controls could be required.

TABLE 70-1 INDUSTRIAL SECTORS SUBJECT TO BENCHMARK MONITORING		
Industry Sector <sup>1</sup>	SIC Code or Activity Code	Benchmark Monitoring Parameters
A	2421	TSS.
	2491	Arsenic, Chromium, Copper.
	2411	TSS.
	2426	TSS.
	2499 (24991303)	COD, TSS.
	2499 (Mulch Dyeing)	BOD, TSS, COD, Aluminum, Arsenic,

		Cadmium, Chromium, Copper, Selenium, Silver, Zinc, Total N, Total P.
B	2631	BOD.
C	2812-2819	Aluminum, Iron, Total N.
	2821-2824	Zinc.
	2841-2844	Total N, Zinc.
	2873-2879	Total N, Zinc, Total P.
	2875 (Composting Facilities)	TSS, BOD, COD, Ammonia, Total N, Total P.
D	2951, 2952	TSS.
E	3251-3259, 3261-3269	Aluminum.
	3274, 3275	TSS, pH.
F	3312-3317	Aluminum, Zinc.
	3321-3325	Aluminum, TSS, Copper, Zinc.
	3351-3357	Copper, Zinc.
	3363-3369	Copper, Zinc.
G <sup>2</sup>	1021	TSS.
H	1221-1241	TSS, Aluminum.
K	HZ (Hazardous Waste Treatment, Storage, or Disposal)	TKN, TSS, TOC, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, Silver.
L	LF (Landfills, Land Application Sites, and Open Dumps)	TSS.
M	5015	TSS, Aluminum, Lead.
N	5093	Copper, Aluminum, Lead, Zinc, TSS, Cadmium, Chromium.
	4499	Aluminum, Cadmium, Chromium, Copper, Lead, Zinc, TSS.

O	SE (Steam Electric Generating Facilities)	Facilities in Sector O are not subject to benchmark requirements.
Q	4412-4499 (except 4499 facilities as specified in Sector N)	TSS, Copper, Zinc.
	3731, 3732	TSS, Copper, Zinc.
U	2021-2026	BOD, TSS.
	2041-2048	TSS, TKN.
	2074-2079	BOD, Total N, TSS.
Y	3011-3069	Zinc.
AA	3411-3471, 3482-3499, 3911-3915	Aluminum, Copper, Zinc.
	3479	Zinc.
AB	3511-3599 (except 3571-3579)	TSS, TPH, Copper, Zinc.
AD	Nonclassified Facilities/Stormwater Discharges Designated by the department as Requiring Permits	As determined by the director.
AE	2611, 2621, 2652-2657, 2671-2679, 2833-2836, 2851, 2861-2869, 2891-2899, 3952, 3211, 3221, 3229, 3231, 3241, 3281, 3291-3299, 3331-3339, 3398, 3399, 3341, 1311, 1321, 1381-1389, 2911, 4512-4581, (TW) Treatment Works, 2011-2015, 2032-2038, 2051-2053, 2061-2068, 2082-2087, 2091-2099, 2111-2141, 2211-2299, 2311-2399, 3131-3199, 2434, 2511-2599, 2711-2796, 3081-3089, 3931, 3942-3949, 3951-3955 (except 3952), 3961, 3965, 3991-3999, 3111, 3711-3799 (except 3731, 3732 see Sector Q), 3571-3579, 3612-3699, 3812-3873	Facilities in Sector AE are not subject to benchmark monitoring requirements.
AF	4011, 4013, 4111-4173, 4212-4231, 4311, 5171	TSS.
<p><sup>1</sup>Table does not include parameters for compliance monitoring under effluent limitations guidelines.</p> <p><sup>2</sup>See Sector G (Part IV G) for additional monitoring discharges from waste rock and overburden piles from active ore mining or dressing facilities, inactive ore mining or dressing facilities, and sites undergoing reclamation.</p>		

1750 (1) Benchmark monitoring shall be performed for all benchmark parameters specified  
1751 for the industrial sector applicable to a facility's discharge. Monitoring shall be  
1752 performed at least once during each of the first four, and potentially all, monitoring  
1753 periods after coverage under the permit begins. Monitoring begins with the first full

1754 monitoring period after the owner is granted coverage under the permit. Monitoring  
1755 periods are specified in Part I A 2.

1756 (2) Benchmark monitoring waivers for facilities testing below benchmark concentration  
1757 values. Waivers from benchmark monitoring are available to facilities whose  
1758 discharges are below benchmark concentration values on an outfall by outfall basis.  
1759 Sector-specific benchmark monitoring is not required to be conducted in subsequent  
1760 monitoring periods during the term of this permit provided:

1761 (a) Samples were collected in four consecutive monitoring periods, and the average  
1762 of the four samples for all parameters at the outfall is below the applicable benchmark  
1763 concentration value in Part IV. Facilities that were covered under the 2019 industrial  
1764 stormwater general permit may use sampling data from the last two monitoring periods  
1765 of that permit and the first two monitoring periods of this permit to satisfy the four  
1766 consecutive monitoring periods requirement;

1767 (b) The facility is not subject to a numeric effluent limitation established in Part I A 1 c  
1768 (1) (stormwater effluent limitations), Part I A 1 c (2) (coal pile runoff), or Part IV (Sector  
1769 Specific Permit Requirements) for any of the parameters at that outfall; and

1770 (c) A waiver request is submitted to and approved by the department. The waiver  
1771 request shall be sent to the appropriate DEQ regional office, along with the supporting  
1772 monitoring data for four consecutive monitoring periods, and a certification that, based  
1773 on current potential pollutant sources and control measures used, discharges from the  
1774 facility are reasonably expected to be substantially similar or cleaner compared to  
1775 when the benchmark monitoring for the four consecutive monitoring periods was done.  
1776 Waiver requests will be evaluated by the department based on (i) benchmark  
1777 monitoring results below the benchmark concentration values; (ii) a favorable  
1778 compliance history (including inspection results); and (iii) no outstanding enforcement  
1779 actions.

1780 The monitoring waiver may be revoked by the department for cause. The permittee  
1781 will be notified in writing that the monitoring waiver is revoked, and that the benchmark  
1782 monitoring requirements are again in force and will remain in effect until the permit's  
1783 expiration date.

1784 (3) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring  
1785 results shall be reported in accordance with Part I A 5 and Part II C and retained in  
1786 accordance with Part II B.

1787 c. Compliance monitoring for discharges subject to numerical effluent limitations or  
1788 discharges to impaired waters.

1789 (1) Facilities subject to stormwater effluent limitation guidelines.

1790 (a) Facilities subject to stormwater effluent limitation guidelines (see Table 70-2) are  
1791 required to monitor the discharges to evaluate compliance with numerical effluent  
1792 limitations. Industry-specific numerical limitations and compliance monitoring  
1793 requirements are described in Part IV of the permit. Permittees with colocated  
1794 industrial activities at the facility that are described in more than one sector in Part IV  
1795 shall comply on a discharge-by-discharge basis with all applicable effluent limitations  
1796 from each sector.

1797 (b) Permittees shall monitor the discharges for the presence of the pollutant subject to  
1798 the effluent limitation at least once during each of the monitoring periods after  
1799 coverage under the permit begins. Monitoring begins with the first full monitoring  
1800 period after the owner is granted coverage under the permit. Monitoring periods are

1801 specified in Part I A 2. The substantially identical outfall monitoring provisions (Part I  
 1802 A 2 f) are not available for numeric effluent limits monitoring.  
 1803 (c) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring  
 1804 results shall be reported in accordance with Part I A 5 and Part II C, and retained in  
 1805 accordance with Part II B.

TABLE 70-2 STORMWATER-SPECIFIC EFFLUENT LIMITATION GUIDELINES	
Effluent Limitation Guideline	Sectors with Affected Facilities
Runoff from material storage piles at cement manufacturing facilities (40 CFR Part 411 Subpart C (established February 20, 1974))	E
Contaminated runoff from phosphate fertilizer manufacturing facilities (40 CFR Part 418 Subpart A (established April 8, 1974))	C
Coal pile runoff at steam electric generating facilities (40 CFR Part 423 (established November 19, 1982))	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas (40 CFR Part 429, Subpart I (established January 26, 1981))	A
Runoff from asphalt emulsion facilities (40 CFR Part 443 Subpart A (established July 24, 1975))	D
Runoff from landfills (40 CFR Part 445, Subpart A and B (established January 19, 2000))	K and L
Discharges from airport deicing operations (40 CFR Part 449 (established May 16, 2012))	Facilities subject to the effluent limitation guidelines in 40 CFR Part 449 may be covered under Sector AD.

1806 (2) Facilities subject to coal pile runoff monitoring.  
 1807 (a) Facilities with discharges of stormwater from coal storage piles shall comply with  
 1808 the limitations and monitoring requirements of Table 70-3 for all discharges containing  
 1809 the coal pile runoff, regardless of the facility's sector of industrial activity.  
 1810 (b) Permittees shall monitor the stormwater discharges at least once during each of  
 1811 the monitoring periods after coverage under the permit begins. Monitoring begins with  
 1812 the first full monitoring period after the owner is granted coverage under the permit.  
 1813 Monitoring periods are specified in Part I A 2. The substantially identical outfall  
 1814 monitoring provisions (Part I A 2 f) are not available for coal pile numeric effluent limits  
 1815 monitoring.  
 1816 (c) The coal pile runoff shall not be diluted with other stormwater or other flows to meet  
 1817 this limitation.  
 1818 (d) If a facility is designed, constructed, and operated to treat the volume of coal pile  
 1819 runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow

1820 of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for  
 1821 total suspended solids.  
 1822 (e) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring  
 1823 results shall be reported in accordance with Part I A 5 and Part II C, and retained in  
 1824 accordance with Part II B.

TABLE 70-3 NUMERIC LIMITATIONS FOR COAL PILE RUNOFF			
Parameter	Limit	Monitoring Frequency	Sample Type
Total Suspended Solids (TSS)	50 mg/l, max.	1/6 months	Grab
pH	6.0 min. - 9.0 max.	1/6 months	Grab

1825 (3) Facilities discharging to an impaired water with an approved TMDL wasteload  
 1826 allocation. Owners of facilities that are a source of the specified pollutant of concern  
 1827 to waters for which a TMDL wasteload allocation has been approved by the U.S.  
 1828 Environmental Protection Agency (EPA) before the term of this permit will be notified  
 1829 by the department when they are approved for coverage under the general permit.

1830 (a) Upon written notification from the department, permittees shall monitor the  
 1831 discharges for the pollutant subject to TMDL wasteload allocation once every six  
 1832 months after coverage under the permit begins, unless another sampling frequency is  
 1833 determined by the department for polychlorinated biphenyls (PCBs). Monitoring begins  
 1834 with the first full monitoring period after the owner is granted coverage under the  
 1835 permit. Monitoring periods are specified in Part I A 2.

1836 (b) Samples shall be collected and analyzed in accordance with Part I A 2. Monitoring  
 1837 results shall be reported in accordance with Part I A 5 and Part II C, and retained in  
 1838 accordance with Part II B.

1839 (c) If the pollutant subject to the TMDL wasteload allocation is below the quantitation  
 1840 level in all of the samples from the first four monitoring periods, the permittee may  
 1841 request to the department in writing that further sampling be discontinued, unless the  
 1842 TMDL has specific instructions to the contrary (in which case those instructions shall  
 1843 be followed). The laboratory certificate of analysis shall be submitted with the request.  
 1844 If approved, documentation of this shall be kept with the SWPPP.

1845 If the pollutant subject to the TMDL wasteload allocation is above the quantitation level  
 1846 in any of the samples from the first four monitoring periods, the permittee shall continue  
 1847 the scheduled TMDL monitoring throughout the term of the permit. Applicable  
 1848 sampling data collected during the 2019 industrial stormwater general permit term may  
 1849 be used to satisfy all or part of the four monitoring periods requirement.

1850 (d) Upon written notification from the department, facilities exceeding the TMDL  
 1851 wasteload allocation shall prepare and submit a pollutant minimization plan (PMP)  
 1852 designed to investigate the location and potential reduction of sources in the facility's  
 1853 stormwater discharges. The PMP shall be developed and submitted to the department  
 1854 for approval within 180 days of the receipt of notification from the department. The  
 1855 PMP shall include the following items, as appropriate:

1856 (i) Facility contact for the contents of the PMP and any activities associated with the  
 1857 PMP;

1858 (ii) A proposed implementation schedule for minimization activities and prospective  
1859 milestones;

1860 (iii) Proposed actions for known or probable sources;

1861 (iv) Proposed action to find and control unknown sources;

1862 (v) A summary of any previous minimization activities; and

1863 (vi) Information on continuing assessment of progress, which may include  
1864 establishment of criteria to evaluate whether the location and potential reduction of  
1865 sources have been addressed.

1866 (4) Facilities discharging to an impaired water without an approved TMDL wasteload  
1867 allocation. Owners of facilities that discharge to waters listed as impaired in the 2022  
1868 Final 305(b)/303(d) Water Quality Assessment Integrated Report, and for which a  
1869 TMDL wasteload allocation has not been approved before the term of this permit, will  
1870 be notified by the department when they are approved for coverage under the general  
1871 permit.

1872 (a) Upon written notification from the department,  
1873 permittees shall monitor the discharges for all pollutants for which the waterbody is  
1874 impaired, and for which a standard analytical method exists, at least once every six  
1875 months after coverage under the permit begins, unless otherwise determined by the  
1876 department for polychlorinated biphenyls (PCBs). Monitoring begins with the first full  
1877 monitoring period after the owner is granted coverage under the permit. Monitoring  
1878 periods are specified in Part I A 2.

1879 (b) If the pollutant for which the waterbody is impaired is suspended solids, turbidity,  
1880 or sediment, or sedimentation, monitor for total suspended solids (TSS). If the pollutant  
1881 for which the waterbody is impaired is expressed in the form of an indicator or  
1882 surrogate pollutant, monitor for that indicator or surrogate pollutant. No monitoring is  
1883 required when a waterbody's biological communities are impaired but no pollutant,  
1884 including indicator or surrogate pollutants, is specified as causing the impairment, or  
1885 when a waterbody's impairment is related to hydrologic modifications, impaired  
1886 hydrology, or temperature. Samples shall be collected and analyzed in accordance  
1887 with Part I A 2. Monitoring results shall be reported in accordance with Part I A 5 and  
1888 Part II C, and retained in accordance with Part II B.

1889 (c) If the pollutant for which the water is impaired is below the quantitation level in the  
1890 discharges from the facility, or it is above the quantitation level but its presence is  
1891 caused solely by natural background sources, the permittee may request to the  
1892 department in writing that further impaired water monitoring be discontinued. The  
1893 laboratory certificate of analysis shall be submitted with the request. If approved,  
1894 documentation of this shall be kept with the SWPPP.

1895 To support a determination that the pollutant's presence is caused solely by natural  
1896 background sources, the following documentation shall be submitted with the request  
1897 and kept with the SWPPP: (i) an explanation of why it is believed that the presence of  
1898 the impairment pollutant in the facility's discharge is not related to the activities at the  
1899 facility; and (ii) data or studies that tie the presence of the impairment pollutant in the  
1900 facility's discharge to natural background sources in the watershed. Natural  
1901 background pollutants include those substances that are naturally occurring in soils or  
1902 groundwater. Natural background pollutants do not include legacy pollutants from  
1903 earlier activity at the facility's site or pollutants in run-on from neighboring sources that  
1904 are not naturally occurring.

1905 2. Monitoring instructions.

1906 a. Collection and analysis of samples. Sampling requirements shall be assessed on  
1907 an outfall by outfall basis. Samples shall be collected and analyzed in accordance with  
1908 the requirements of Part II A.

1909 b. When and how to sample. A minimum of one grab sample shall be taken from the  
1910 discharge associated with industrial activity resulting from a storm event that results in  
1911 a discharge from the site, providing the interval from the preceding storm event  
1912 discharge is at least 72 hours. The 72-hour storm interval is waived if the permittee is  
1913 able to document that less than a 72-hour interval is representative for local storm  
1914 events during the sampling period. In the case of snowmelt, the monitoring shall be  
1915 performed at a time when a measurable discharge occurs at the site. For discharges  
1916 from a stormwater management structure, the monitoring shall be performed at a time  
1917 when a measurable discharge occurs from the structure.

1918 The grab sample shall be taken during the first 30 minutes of the discharge. If it is not  
1919 practicable to take the sample during the first 30 minutes, the sample may be taken  
1920 during the first three hours of the discharge, provided that the permittee explains why  
1921 a grab sample during the first 30 minutes was impracticable. This information shall be  
1922 submitted in the department's electronic discharge monitoring report (e-DMR) system,  
1923 and maintained with the SWPPP. If the sampled discharge commingles with process  
1924 or nonprocess water, the permittee shall attempt to sample the stormwater discharge  
1925 before it mixes with the nonstormwater.

1926 c. Storm event data. For each monitoring event (except snowmelt monitoring), along  
1927 with the monitoring results, the permittee shall identify the date of the storm event  
1928 sampled; rainfall total (in inches) of the storm event that generated the sampled runoff;  
1929 and the interval between the storm event sampled and the end of the previous storm  
1930 event discharge. For snowmelt monitoring, the permittee shall identify the date of the  
1931 sampling event.

1932 d. Monitoring periods.

1933 (1) Quarterly visual monitoring. The quarterly visual examinations shall be made at  
1934 least once in each of the following three-month periods each year of permit coverage:  
1935 January through March, April through June, July through September, and October  
1936 through December.

1937 (2) Benchmark monitoring, effluent limitation monitoring, and impaired waters  
1938 monitoring (for waters both with and without an approved TMDL). Monitoring shall be  
1939 conducted at least once in each of the following semiannual periods each year of  
1940 permit coverage: January through June, and July through December.

1941 e. Documentation explaining a facility's inability to obtain a sample (including dates  
1942 and times the outfalls were viewed or sampling was attempted), of no rain event, or of  
1943 deviation from the 72-hour storm interval shall be submitted with the e-DMR and  
1944 maintained with the SWPPP. Acceptable documentation includes National Climatic  
1945 Data Center (NCDC) weather station data, local weather station data, facility rainfall  
1946 logs, and other appropriate supporting data.

1947 f. Representative outfalls - substantially identical discharges. If the facility has two or  
1948 more outfalls that discharge substantially identical effluents, based on similarities of  
1949 the industrial activities, significant materials, size of drainage areas, and stormwater  
1950 management practices occurring within the drainage areas of the outfalls, frequency  
1951 of discharges, and stormwater management practices occurring within the drainage  
1952 areas of the outfalls, the permittee may conduct monitoring on the effluent of just one  
1953 of the outfalls and report that the observations also apply to the substantially identical  
1954 outfall. The substantially identical outfall monitoring provisions apply to quarterly visual

1955 monitoring, benchmark monitoring, and impaired waters monitoring (both those with  
1956 and without an approved TMDL). The substantially identical outfall monitoring  
1957 provisions are not available for numeric effluent limits monitoring. The permittee shall  
1958 include the following information in the SWPPP:

1959 (1) The locations of the outfalls;

1960 (2) An evaluation, including available monitoring data, indicating the outfalls are  
1961 expected to discharge substantially identical effluents, including evaluation of  
1962 monitoring data where available; and

1963 (3) An estimate of the size of each outfall's drainage area in acres.

1964 3. Adverse climatic conditions waiver. When adverse weather conditions prevent the  
1965 collection of samples, a substitute sample may be taken during a qualifying storm event  
1966 in the next monitoring period. Adverse weather conditions are those that are dangerous  
1967 or create inaccessibility for staff and may include local flooding, high winds, electrical  
1968 storms, or situations that otherwise make sampling impracticable (e.g., drought or  
1969 extended frozen conditions). Unless specifically stated otherwise, this waiver may be  
1970 applied to any monitoring required under this permit. Narrative documentation of  
1971 conditions necessitating the use of the waiver shall be kept with the SWPPP.

1972 4. Inactive and unstaffed sites (including temporarily inactive sites).

1973 a. A waiver of the quarterly visual monitoring, routine facility inspections, and  
1974 monitoring requirements (including benchmark, effluent limitation, and impaired waters  
1975 monitoring) may be granted by the department at a facility that is both inactive and  
1976 unstaffed, as long as the facility remains inactive and unstaffed and there are no  
1977 industrial materials or activities exposed to stormwater. The owner of the facility is only  
1978 required to conduct an annual routine site inspection in accordance with the  
1979 requirements in Part III B 5.

1980 b. An inactive and unstaffed sites waiver request shall be submitted to the department  
1981 for approval and shall include the name of the facility; the facility's VPDES general  
1982 permit registration number; a contact person, telephone number, and email address;  
1983 the reason for the request; and the date the facility became or will become inactive  
1984 and unstaffed. The waiver request shall be signed and certified in accordance with  
1985 Part II K. If this waiver is granted, a copy of the request and the department's written  
1986 approval of the waiver shall be maintained with the SWPPP.

1987 c. If circumstances change and industrial materials or activities become exposed to  
1988 stormwater or the facility becomes either active or staffed, the permittee shall notify  
1989 the department within 30 days, and all quarterly visual monitoring, routine facility  
1990 inspections, and monitoring requirements shall be resumed immediately.

1991 d. The department retains the right to revoke this waiver when it is determined that the  
1992 discharge is causing, has a reasonable potential to cause, or contributes to a water  
1993 quality standards violation.

1994 e. Inactive and unstaffed facilities covered under Sector G (Metal Mining) and Sector  
1995 H (Coal Mines and Coal Mining-Related Facilities) are not required to meet the "no  
1996 industrial materials or activities exposed to stormwater" standard to be eligible for this  
1997 waiver, consistent with the conditional exemption requirements established in Part IV  
1998 Sector G and Part IV Sector H.

1999 5. Reporting monitoring results.

2000 a. Reporting to the department. The permittee shall follow the reporting requirements  
2001 and deadlines in Table 70-4 for the types of monitoring that apply to the facility:

TABLE 70-4 MONITORING REPORTING REQUIREMENTS	
Semiannual Monitoring	Submit the results by January 10 and by July 10.
Quarterly Visual Monitoring	Retain results with SWPPP - do not submit unless requested to do so by the department.

2002 Permittees shall submit results for each outfall associated with industrial activity  
2003 according to the requirements of Part II C.

2004 b. Significant digits. The permittee shall report at least the same number of significant  
2005 digits as a numeric effluent limitation or TMDL wasteload allocation for a given  
2006 parameter; otherwise, at least two significant digits shall be reported for a given  
2007 parameter. Regardless of the rounding convention used by the permittee (i.e., five  
2008 always rounding up or to the nearest even number), the permittee shall use the  
2009 convention consistently and shall ensure that consulting laboratories employed by the  
2010 permittee use the same convention.

2011 6. Corrective actions.

2012 a. The permittee shall take corrective action whenever:

2013 (1) Routine facility inspections, inspections by local, state or federal officials, or any  
2014 other process, observation or event result in a determination that modifications to the  
2015 stormwater control measures are necessary to meet the permit requirements;

2016 (2) There is any exceedance of an effluent limitation (including coal pile runoff), TMDL  
2017 wasteload allocation, or a reduction required by a local ordinance established by a  
2018 municipality to meet Chesapeake Bay TMDL requirements;

2019 (3) The department determines, or the permittee becomes aware, that the stormwater  
2020 control measures are not stringent enough for the discharge to meet applicable water  
2021 quality standards; or

2022 (4) Benchmark monitoring results exceed the benchmark concentration value for a  
2023 parameter.

2024 The permittee shall review the SWPPP and modify it as necessary to address any  
2025 deficiencies. Revisions to the SWPPP shall be completed within 60 days following the  
2026 discovery of the deficiency. When control measures need to be modified or added  
2027 (distinct from regular preventive maintenance of existing control measures described  
2028 in Part III C), implementation shall be completed before the next anticipated storm  
2029 event if possible, but no later than 60 days after the deficiency is discovered, or as  
2030 otherwise provided or approved by the department. In cases where construction is  
2031 necessary to implement control measures, the permittee shall include a schedule in  
2032 the SWPPP that provides for the completion of the control measures as expeditiously  
2033 as practicable, but no later than three years after the deficiency is discovered. Where  
2034 a construction compliance schedule is included in the SWPPP, the SWPPP shall  
2035 include appropriate nonstructural and temporary controls to be implemented in the  
2036 affected portion of the facility before completion of the permanent control measure.  
2037 Any corrective actions taken shall be documented and retained with the SWPPP. Any  
2038 control measure modifications shall be dated and document the amount of time taken  
2039 to modify the applicable control measures or implement additional control measures.

2040 b. Natural background pollutant levels. If the concentration of a pollutant exceeds a  
2041 benchmark concentration value and the permittee determines that exceedance of the

2042 benchmark is attributable solely to the presence of that pollutant in the natural  
2043 background, corrective action is not required provided that:

2044 (1) The concentration of the benchmark monitoring result is less than or equal to the  
2045 concentration of that pollutant in the natural background;

2046 (2) The permittee documents and maintains with the SWPPP the supporting rationale  
2047 for concluding that benchmark exceedances are in fact attributable solely to natural  
2048 background pollutant levels. The supporting rationale shall include any data previously  
2049 collected by the facility or others (including literature studies) that describe the levels  
2050 of natural background pollutants in the facility's stormwater discharges; and

2051 (3) The permittee notifies the department on the benchmark monitoring DMR that the  
2052 benchmark exceedances are attributable solely to natural background pollutant levels.  
2053 Natural background pollutants include those substances that are naturally occurring in  
2054 soils or groundwater. Natural background pollutants do not include legacy pollutants  
2055 from earlier activity on the facility's site, or pollutants in run-on from neighboring  
2056 sources that are not naturally occurring.

2057 c. Follow-up reporting. If at any time monitoring results show that discharges from the  
2058 facility exceed an effluent limitation or a TMDL wasteload allocation, or the department  
2059 determines that discharges from the facility are causing or contributing to an  
2060 exceedance of a water quality standard, immediate steps shall be taken to eliminate  
2061 the exceedances in accordance with Part I A 6. Within 30 calendar days of  
2062 implementing the relevant corrective action, an exceedance report shall be submitted  
2063 to the department and shall be signed in accordance with Part II K. The following  
2064 information shall be included in the report:

2065 (1) General permit registration number;

2066 (2) Facility name and address;

2067 (3) Receiving water for each outfall exceeding an effluent limitation of TMDL wasteload  
2068 allocation;

2069 (4) Monitoring data from the event being reported;

2070 (5) A narrative description of the situation;

2071 (6) A description of actions taken since the event was discovered and steps taken to  
2072 minimize to the extent feasible pollutants in the discharge; and

2073 (7) A local facility contact name, email address, and phone number.

2074 B. Special conditions.

2075 1. Authorized nonstormwater discharges. Except as provided in this section or in Part IV,  
2076 all discharges covered by this permit shall be composed entirely of stormwater. The  
2077 following nonstormwater discharges are authorized by this permit:

2078 a. Discharges from emergency firefighting activities or firefighting training activities  
2079 managed in a manner to avoid an instream impact in accordance with § 9.1-207.1 of  
2080 the Code of Virginia;

2081 b. Fire hydrant flushings, managed in a manner to avoid an instream impact;

2082 c. Potable water, including water line flushings, managed in a manner to avoid an  
2083 instream impact;

2084 d. Uncontaminated condensate from air conditioners, coolers, and other compressors  
2085 and from the outside storage of refrigerated gases or liquids;

2086 e. Irrigation drainage;

- 2087 f. Landscape watering provided all pesticides, herbicides, and fertilizer have been  
2088 applied in accordance with the approved labeling;
- 2089 g. Routine external building washdown, provided no soaps, solvents, or detergents are  
2090 used, external building surfaces do not contain hazardous substances, and the  
2091 washwater is filtered, settled, or similarly treated prior to discharge;
- 2092 h. Pavement washwaters, provided no soaps, solvents, detergents, or hazardous  
2093 cleaning products are used, and no spills or leaks of toxic or hazardous materials have  
2094 occurred (unless all spilled or leaked material is removed prior to washing), and the  
2095 washwater is filtered, settled, or similarly treated prior to discharge;
- 2096 i. Uncontaminated groundwater or spring water;
- 2097 j. Foundation or footing drains where flows are not contaminated with process  
2098 materials; and
- 2099 k. Incidental windblown mist from cooling towers that collects on rooftops or adjacent  
2100 portions of the facility, but not intentional discharges from the cooling tower (e.g.,  
2101 "piped" cooling tower blowdown or drains).
- 2102 All other nonstormwater discharges are not authorized and shall either be eliminated or  
2103 covered under a separate VPDES permit.
- 2104 2. Releases of hazardous substances or oil in excess of reportable quantities. The  
2105 discharge of hazardous substances or oil in the stormwater discharges from the facility  
2106 shall be prevented or minimized in accordance with the SWPPP for the facility. This permit  
2107 does not authorize the discharge of hazardous substances or oil resulting from an on-site  
2108 spill. This permit does not relieve the permittee of the reporting requirements of 40 CFR  
2109 Part 110, 40 CFR Part 117, and 40 CFR Part 302 or § 62.1-44.34:19 of the Code of  
2110 Virginia.
- 2111 Where a release containing a hazardous substance or oil in an amount equal to or in  
2112 excess of a reportable quantity established under either 40 CFR Part 110, 40 CFR Part  
2113 117, or 40 CFR Part 302 occurs during a 24-hour period:
- 2114 a. The permittee is required to notify the department in accordance with the  
2115 requirements of Part II G as soon as he has knowledge of the discharge;
- 2116 b. Where a release enters an MS4, the permittee shall also notify the owner of the  
2117 MS4; and
- 2118 c. The SWPPP required under Part III shall be reviewed to identify measures to  
2119 prevent the reoccurrence of the releases and to respond to the releases, and the  
2120 SWPPP shall be modified where appropriate.
- 2121 3. Colocated industrial activity. If the facility has industrial activities occurring on-site that  
2122 are described by any of the activities in Part IV of the permit, those industrial activities are  
2123 considered to be colocated industrial activities. Stormwater discharges from colocated  
2124 industrial activities are authorized by this permit, provided that the permittee complies with  
2125 any and all additional SWPPP and monitoring requirements from Part IV applicable to that  
2126 particular colocated industrial activity. The permittee shall be responsible for additional  
2127 SWPPP and monitoring requirements applicable to the colocated industrial activity by  
2128 examining the narrative descriptions of all discharges covered under this section.
- 2129 4. The stormwater discharges authorized by this permit may be combined with other  
2130 sources of stormwater that are not required to be covered under a VPDES permit, so long  
2131 as the combined discharge is in compliance with this permit.
- 2132 5. There shall be no discharge of waste, garbage, or floating debris in other than trace  
2133 amounts.

- 2134 6. Approval for coverage under this general permit does not relieve the permittee of the  
2135 responsibility to comply with any other applicable federal, state, or local statute, ordinance,  
2136 or regulation.
- 2137 7. Discharges to waters subject to TMDL wasteload allocations. Owners of facilities that  
2138 are a source of the specified pollutant of concern to waters for which a TMDL wasteload  
2139 allocation has been approved by EPA before the term of this permit shall incorporate  
2140 measures and controls into the SWPPP required by Part III that are consistent with the  
2141 assumptions and requirements of the TMDL. The department will provide written  
2142 notification to the owner that a facility is subject to the TMDL requirements. The facility's  
2143 SWPPP shall specifically address any conditions or requirements included in the TMDL  
2144 that are applicable to discharges from the facility. If the TMDL establishes a specific  
2145 numeric wasteload allocation that applies to discharges from the facility, the owner shall  
2146 perform any required monitoring in accordance with Part I A 1 c (3), and implement control  
2147 measures designed to meet that allocation.
- 2148 8. Discharges through a regulated MS4 to waters subject to the Chesapeake Bay TMDL.  
2149 In addition to the requirements of this permit, any facility with industrial activity stormwater  
2150 discharges through a regulated MS4 that is notified by the MS4 operator that the locality  
2151 has adopted ordinances to meet the Chesapeake Bay TMDL shall incorporate measures  
2152 and controls into its SWPPP to comply with applicable local TMDL ordinance  
2153 requirements.
- 2154 9. Expansion of facilities that discharge to waters subject to the Chesapeake Bay TMDL.  
2155 Virginia's Phase I Chesapeake Bay TMDL Watershed Implementation Plan (November  
2156 29, 2010), states that the wasteloads from any expansion of an existing permitted facility  
2157 discharging stormwater in the Chesapeake Bay watershed cannot exceed the nutrient and  
2158 sediment loadings that were discharged from the expanded portion of the land prior to the  
2159 land being developed for the expanded industrial activity.
- 2160 a. For any industrial activity area expansions (i.e., construction activities, including  
2161 clearing, grading, and excavation activities) that begin on or after July 1, 2024, the  
2162 permittee shall document in the SWPPP the information and calculations used to  
2163 determine the nutrient and sediment loadings discharged from the expanded land area  
2164 before the land was developed, and the measures and controls that were employed to  
2165 meet the no net increase of stormwater nutrient and sediment load as a result of the  
2166 expansion of the industrial activity. Any land disturbance that is exempt from permitting  
2167 under the VPDES construction stormwater general permit regulation (9VAC25-880) is  
2168 exempt from this requirement.
- 2169 b. The permittee may use the VSMP water quality design criteria, 9VAC25-875-580,  
2170 to meet the requirements of Part I B 10 a. Under this criteria, the total phosphorus load  
2171 shall not exceed the greater of (i) the total phosphorus load that was discharged from  
2172 the expanded portion of the land before the land being developed for the industrial  
2173 activity or (ii) 0.41 pounds per acre per year. Compliance with the water quality design  
2174 criteria may be determined utilizing the Virginia Runoff Reduction Method or another  
2175 equivalent methodology approved by the department. Design specifications and  
2176 pollutant removal efficiencies for specific BMPs can be found on the Virginia  
2177 Stormwater BMP Clearinghouse website.
- 2178 c. The permittee may consider utilization of any pollutant trading or offset program in  
2179 accordance with §§ 62.1-44.19:20 through 62.1-44.19:23 of the Code of Virginia,  
2180 governing trading and offsetting, to meet the no net increase requirement.
- 2181 10. Water quality protection. The discharges authorized by this permit shall be controlled  
2182 as necessary to meet applicable water quality standards. The department expects that

2183 compliance with the conditions in this permit will control discharges as necessary to meet  
2184 applicable water quality standards.

2185 11. Adding or deleting stormwater outfalls. The permittee may add new or delete existing  
2186 stormwater outfalls at the facility as necessary and appropriate. The permittee shall update  
2187 the SWPPP and notify the department of all outfall changes within 30 days of the change.  
2188 The permittee shall submit a copy of the updated SWPPP site map with this notification.

2189 12. Antidegradation requirements for new or increased discharges to high quality waters.  
2190 Facilities that add new outfalls, or increase their discharges from existing outfalls that  
2191 discharge directly to high quality waters designated under Virginia's water quality  
2192 standards antidegradation policy under 9VAC25-260-30 A 2 may be notified by the  
2193 department that additional control measures, or other permit conditions are necessary to  
2194 comply with the applicable antidegradation requirements, or may be notified that an  
2195 individual permit is required in accordance with 9VAC25-31-170 B 3.

2196 13. Termination of permit coverage.

2197 a. The owner may terminate coverage under this general permit by filing a notice of  
2198 termination with the department. The notice of termination may be filed after one or  
2199 more of the following conditions have been met:

2200 (1) Operations have ceased at the facility and there are no longer discharges of  
2201 stormwater associated with industrial activity from the facility;

2202 (2) A new owner has assumed responsibility for the facility. A notice of termination  
2203 does not have to be submitted if a VPDES Change of Ownership Agreement Form has  
2204 been submitted;

2205 (3) All stormwater discharges associated with industrial activity have been covered by  
2206 an individual VPDES permit; or

2207 (4) Termination of coverage is being requested for another reason, provided the  
2208 department agrees that coverage under this general permit is no longer needed.

2209 b. The notice of termination shall contain the following information:

2210 (1) Owner's name, mailing address, telephone number, and email address (if  
2211 available);

2212 (2) Facility name and location;

2213 (3) VPDES industrial stormwater general permit registration number;

2214 (4) The basis for submitting the notice of termination, including:

2215 (a) A statement indicating that a new owner has assumed responsibility for the facility;

2216 (b) A statement indicating that operations have ceased at the facility, and there are no  
2217 longer discharges of stormwater associated with industrial activity from the facility;

2218 (c) A statement indicating that all stormwater discharges associated with industrial  
2219 activity have been covered by an individual VPDES permit; or

2220 (d) A statement indicating that termination of coverage is being requested for another  
2221 reason and a description of the reason; and

2222 (5) The following certification: "I certify under penalty of law that all stormwater  
2223 discharges associated with industrial activity from the identified facility that are  
2224 authorized by this VPDES general permit have been eliminated, or covered under a  
2225 VPDES individual permit, or that I am no longer the owner of the industrial activity, or  
2226 permit coverage should be terminated for another reason listed above. I understand  
2227 that by submitting this notice of termination, that I am no longer authorized to discharge  
2228 stormwater associated with industrial activity in accordance with the general permit,

2229 and that discharging pollutants in stormwater associated with industrial activity to  
2230 surface waters is unlawful where the discharge is not authorized by a VPDES permit.  
2231 I also understand that the submittal of this notice of termination does not release an  
2232 owner from liability for any violations of this permit or the Clean Water Act."  
2233 c. The notice of termination shall be signed in accordance with Part II K.  
2234 d. The notice of termination shall be submitted to the DEQ regional office serving the  
2235 area where the industrial facility is located.

2236 Part II

2237 Conditions Applicable to All VPDES Permits

2238 A. Monitoring.

- 2239 1. Samples and measurements taken as required by this permit shall be representative of  
2240 the monitored activity.
- 2241 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part  
2242 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless  
2243 other procedures have been specified in this permit.
- 2244 3. The permittee shall periodically calibrate and perform maintenance procedures on all  
2245 monitoring and analytical instrumentation at intervals that will ensure accuracy of  
2246 measurements.
- 2247 4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-  
2248 45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46  
2249 (Accreditation for Commercial Environmental Laboratories).

2250 B. Records.

- 2251 1. Records of monitoring information shall include:
- 2252 a. The date, exact place, and time of sampling or measurements;
  - 2253 b. The individuals who performed the sampling or measurements;
  - 2254 c. The dates and times analyses were performed;
  - 2255 d. The individuals who performed the analyses;
  - 2256 e. The analytical techniques or methods used; and
  - 2257 f. The results of the analyses.
- 2258 2. The permittee shall retain copies of the SWPPP, including any modifications made  
2259 during the term of this permit, records of all monitoring information, including all calibration  
2260 and maintenance records and all original strip chart recordings for continuous monitoring  
2261 instrumentation, copies of all reports required by this permit, and records of all data used  
2262 to complete the registration statement for this permit, for a period of at least three years  
2263 from the date that coverage under this permit expires or is terminated. This period of  
2264 retention shall be extended automatically during the course of any unresolved litigation  
2265 regarding the regulated activity or regarding control standards applicable to the permittee,  
2266 or as requested by the department.

2267 C. Reporting monitoring results.

- 2268 1. The permittee shall submit the results of the monitoring required by this permit not later  
2269 than the 10th day of the month after monitoring takes place, unless another reporting  
2270 schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the  
2271 department's regional office.
- 2272 2. Monitoring results shall be reported in the department's electronic discharge monitoring  
2273 report (e-DMR) system. All reports and forms submitted in compliance with this permit  
2274 shall be submitted electronically by the permittee in accordance with 9VAC25-31-1020.

2275 3. If the permittee monitors any pollutant specifically addressed by this permit more  
2276 frequently than required by this permit using test procedures approved under 40 CFR Part  
2277 136 or using other test procedures approved by the U.S. Environmental Protection Agency  
2278 or using procedures specified in this permit, the results of this monitoring shall be included  
2279 in the calculation and reporting of the data submitted in e-DMR or reporting form specified  
2280 by the department.

2281 4. Calculations for all limitations which require averaging of measurements shall utilize an  
2282 arithmetic mean unless otherwise specified in this permit.

2283 D. Duty to provide information. The permittee shall furnish to the department, within a  
2284 reasonable time, any information that the department may request to determine whether cause  
2285 exists for modifying, revoking and reissuing, or terminating coverage under this permit or to  
2286 determine compliance with this permit. The department may require the permittee to furnish on  
2287 request plans, specifications, and other pertinent information as may be necessary to determine  
2288 the effect of the wastes from the discharge on the quality of state waters, or other information as  
2289 may be necessary to accomplish the purposes of the State Water Control Law. The permittee  
2290 shall also furnish to the department on request copies of records required to be kept by this permit.

2291 E. Compliance schedule reports. Reports of compliance or noncompliance with, or any  
2292 progress reports on, interim and final requirements contained in any compliance schedule of this  
2293 permit shall be submitted no later than 14 days following each schedule date.

2294 F. Unauthorized discharges. Except in compliance with this permit, or another permit issued  
2295 by the department, it shall be unlawful for any person to:

2296 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or  
2297 deleterious substances; or

2298 2. Otherwise alter the physical, chemical, or biological properties of state waters and make  
2299 them detrimental to the public health, or to animal or aquatic life, or to the use of state  
2300 waters for domestic or industrial consumption, for recreation, or for other uses.

2301 G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a  
2302 discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into  
2303 or upon state waters in violation of Part II F; or who discharges or causes or allows a discharge  
2304 that may reasonably be expected to enter state waters in violation of Part II F, shall notify the  
2305 department of the discharge immediately upon discovery of the discharge, but in no case later  
2306 than 24 hours after the discovery. A written report of the unauthorized discharge shall be  
2307 submitted to the department within five days of discovery of the discharge. The written report shall  
2308 contain:

2309 1. A description of the nature and location of the discharge;

2310 2. The cause of the discharge;

2311 3. The date on which the discharge occurred;

2312 4. The length of time that the discharge continued;

2313 5. The volume of the discharge;

2314 6. If the discharge is continuing, how long it is expected to continue;

2315 7. If the discharge is continuing, what the expected total volume of the discharge will be;  
2316 and

2317 8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the  
2318 present discharge or any future discharges not authorized by this permit.

2319 Discharges reportable to the department under the immediate reporting requirements of other  
2320 regulations are exempted from this requirement.

2321 H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge  
2322 including a bypass or upset should occur from a treatment works and the discharge enters or  
2323 could be expected to enter state waters, the permittee shall promptly notify, in no case later than  
2324 24 hours, the department after the discovery of the discharge. This notification shall provide all  
2325 available details of the incident, including any adverse effects on aquatic life and the known  
2326 number of fish killed. The permittee shall reduce the report to writing and shall submit it to the  
2327 department within five days of discovery of the discharge in accordance with Part II I 1 b. Unusual  
2328 and extraordinary discharges include any discharge resulting from:

- 2329 1. Unusual spillage of materials resulting directly or indirectly from processing operations;
- 2330 2. Breakdown of processing or accessory equipment;
- 2331 3. Failure or taking out of service some or all of the treatment works; and
- 2332 4. Flooding or other acts of nature.

2333 I. Reports of noncompliance.

2334 1. The permittee shall report any noncompliance that may adversely affect state waters or  
2335 may endanger public health.

2336 a. A report shall be provided within 24 hours from the time the permittee becomes  
2337 aware of the circumstances. The following shall be included as information that shall  
2338 be reported within 24 hours under Part II I:

- 2339 (1) Any unanticipated bypass; and
- 2340 (2) Any upset that causes a discharge to surface waters.

2341 b. A written report shall be submitted within five days and shall contain:

- 2342 (1) A description of the noncompliance and its cause;
- 2343 (2) The period of noncompliance, including exact dates and times, and if the  
2344 noncompliance has not been corrected, the anticipated time it is expected to continue;  
2345 and
- 2346 (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the  
2347 noncompliance.

2348 The department may waive the written report on a case-by-case basis for reports of  
2349 noncompliance under Part II I if the oral report has been received within 24 hours and no  
2350 adverse impact on state waters has been reported.

2351 2. The permittee shall report all instances of noncompliance not reported under Part II I 1  
2352 in writing at the time the next monitoring reports are submitted. The reports shall contain  
2353 the information listed in Part II I 1.

2354 3. The immediate (within 24 hours) reports required in Part II G, H and I shall be made to  
2355 the department's regional office. Reports may be made by telephone or online at  
2356 <https://www.deq.virginia.gov/our-programs/pollution-response>. For reports outside normal  
2357 working hours, the online portal shall be used. For emergencies, call the Virginia  
2358 Department of Emergency Management's Emergency Operations Center (24-hours) at 1-  
2359 800-468-8892.

2360 J. Notice of planned changes.

2361 1. The permittee shall give notice to the department as soon as possible of any planned  
2362 physical alterations or additions to the permitted facility. Notice is required only when:

- 2363 a. The permittee plans alteration or addition to any building, structure, facility, or  
2364 installation from which there is or may be a discharge of pollutants, the construction of  
2365 which began:

- 2366 (1) After promulgation of standards of performance under § 306 of the Clean Water  
2367 Act which are applicable to the source; or
- 2368 (2) After proposal of standards of performance in accordance with § 306 of the Clean  
2369 Water Act that are applicable to the source, but only if the standards are promulgated  
2370 in accordance with § 306 within 120 days of their proposal;
- 2371 b. The alteration or addition could significantly change the nature or increase the  
2372 quantity of pollutants discharged. This notification applies to pollutants that are subject  
2373 neither to effluent limitations nor to notification requirements specified elsewhere in  
2374 this permit; or
- 2375 c. The alteration or addition results in a significant change in the permittee's sludge  
2376 use or disposal practices, and the alteration, addition, or change may justify the  
2377 application of permit conditions that are different from or absent in the existing permit,  
2378 including notification of additional use or disposal sites not reported during the permit  
2379 application process or not reported pursuant to an approved land application plan.
- 2380 2. The permittee shall give advance notice to the department of any planned changes in  
2381 the permitted facility or activity that may result in noncompliance with permit requirements.
- 2382 K. Signatory requirements.
- 2383 1. Registration statement. All registration statements shall be signed as follows:
- 2384 a. For a corporation: by a responsible corporate officer. For the purpose of this section,  
2385 a responsible corporate officer means (i) a president, secretary, treasurer, or vice-  
2386 president of the corporation in charge of a principal business function, or any other  
2387 person who performs similar policy-making or decision-making functions for the  
2388 corporation; or (ii) the manager of one or more manufacturing, production, or operating  
2389 facilities, provided the manager is authorized to make management decisions that  
2390 govern the operation of the regulated facility including having the explicit or implicit  
2391 duty of making major capital investment recommendations, and initiating and directing  
2392 other comprehensive measures to ensure long-term environmental compliance with  
2393 environmental laws and regulations; the manager can ensure that the necessary  
2394 systems are established or actions taken to gather complete and accurate information  
2395 for permit registration requirements; and where authority to sign documents has been  
2396 assigned or delegated to the manager in accordance with corporate procedures;
- 2397 b. For a partnership or sole proprietorship: by a general partner or the proprietor,  
2398 respectively; or
- 2399 c. For a municipality, state, federal, or other public agency: by either a principal  
2400 executive officer or ranking elected official. For purposes of this section, a principal  
2401 executive officer of a public agency includes (i) the chief executive officer of the  
2402 agency, or (ii) a senior executive officer having responsibility for the overall operations  
2403 of a principal geographic unit of the agency.
- 2404 2. Reports. All reports required by permits, and other information requested by the  
2405 department shall be signed by a person described in Part II K 1 or by a duly authorized  
2406 representative of that person. A person is a duly authorized representative only if:
- 2407 a. The authorization is made in writing by a person described in Part II K 1;
- 2408 b. The authorization specifies either an individual or a position having responsibility for  
2409 the overall operation of the regulated facility or activity (e.g., the position of plant  
2410 manager, operator of a well or a well field, superintendent, position of equivalent  
2411 responsibility, or an individual or position having overall responsibility for  
2412 environmental matters for the company). A duly authorized representative may be a  
2413 named individual or any individual occupying a named position; and

2414 c. The written authorization is submitted to the department.

2415 3. Changes to authorization. If an authorization under Part II K 2 is no longer accurate

2416 because a different individual or position has responsibility for the overall operation of the

2417 facility, a new authorization satisfying the requirements of Part II K 2 shall be submitted to

2418 the department before or together with any reports, or information to be signed by an

2419 authorized representative.

2420 4. Certification. Any person signing a document under Part II K 1 or 2 shall make the

2421 following certification:

2422 "I certify under penalty of law that this document and all attachments were prepared

2423 under my direction or supervision in accordance with a system designed to assure that

2424 qualified personnel properly gather and evaluate the information submitted. Based on

2425 my inquiry of the person or persons who manage the system, or those persons directly

2426 responsible for gathering the information, the information submitted is, to the best of

2427 my knowledge and belief, true, accurate, and complete. I am aware that there are

2428 significant penalties for submitting false information, including the possibility of fine

2429 and imprisonment for knowing violations."

2430 L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit

2431 noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act,

2432 except that noncompliance with certain provisions of this permit may constitute a violation of the

2433 State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for

2434 enforcement action; for permit coverage termination or denial of a permit coverage renewal.

2435 The permittee shall comply with effluent standards or prohibitions established under § 307(a)

2436 of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish

2437 these standards even if this permit has not yet been modified to incorporate the requirement.

2438 M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit after

2439 the expiration date of this permit, the permittee shall submit a new registration statement at least

2440 60 days before the expiration date of the existing permit, unless permission for a later date has

2441 been granted by the department. The department shall not grant permission for registration

2442 statements to be submitted later than the expiration date of the existing permit.

2443 N. Effect of a permit. This permit neither conveys any property rights in either real or personal

2444 property or any exclusive privileges nor authorizes any injury to private property or invasion of

2445 personal rights, or any infringement of federal, state, or local law or regulations.

2446 O. State law. Nothing in this permit shall be construed to preclude the institution of any legal

2447 action under, or relieve the permittee from any responsibilities, liabilities, or penalties established

2448 pursuant to any other state law or regulation or under authority preserved by § 510 of the Clean

2449 Water Act. Except as provided in permit conditions on bypassing as described in Part II U and

2450 upset as described in Part II V, nothing in this permit shall be construed to relieve the permittee

2451 from civil and criminal penalties for noncompliance.

2452 P. Oil and hazardous substance liability. Nothing in this permit shall be construed to preclude

2453 the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or

2454 penalties to which the permittee is or may be subject under §§ 62.1-44.34:14 through 62.1-

2455 44.34:23 of the State Water Control Law.

2456 Q. Proper operation and maintenance. The permittee shall at all times properly operate and

2457 maintain all facilities and systems of treatment and control (and related appurtenances) that are

2458 installed or used by the permittee to achieve compliance with the conditions of this permit. Proper

2459 operation and maintenance also includes effective plant performance, adequate funding,

2460 adequate staffing, and adequate laboratory and process controls, including appropriate quality

2461 assurance procedures. This provision requires the operation of back-up or auxiliary facilities or

2462 similar systems that are installed by the permittee only when the operation is necessary to achieve  
2463 compliance with the conditions of this permit.

2464 R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of  
2465 treatment or management of pollutants shall be disposed of in a manner so as to prevent any  
2466 pollutant from the materials from entering state waters.

2467 S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any  
2468 discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood  
2469 of adversely affecting human health or the environment.

2470 T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an  
2471 enforcement action that it would have been necessary to halt or reduce the permitted activity in  
2472 order to maintain compliance with the conditions of this permit.

2473 U. Bypass.

2474 1. "Bypass" means the intentional diversion of waste streams from any portion of a  
2475 treatment facility. The permittee may allow any bypass to occur that does not cause  
2476 effluent limitations to be exceeded, but only if it also is for essential maintenance to assure  
2477 efficient operation. These bypasses are not subject to the provisions of Part II U 2 and 3.

2478 2. Notice.

2479 a. Anticipated bypass. If the permittee knows in advance of the need for a bypass,  
2480 prior notice shall be submitted, if possible at least 10 days before the date of the  
2481 bypass.

2482 b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass  
2483 as required in Part II I.

2484 3. Prohibition of bypass.

2485 a. Bypass is prohibited, and the department may take enforcement action against a  
2486 permittee for bypass, unless:

2487 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property  
2488 damage;

2489 (2) There were no feasible alternatives to the bypass (e.g., the use of auxiliary  
2490 treatment facilities, retention of untreated wastes, or maintenance during normal  
2491 periods of equipment downtime). This condition is not satisfied if adequate back-up  
2492 equipment should have been installed in the exercise of reasonable engineering  
2493 judgment to prevent a bypass which occurred during normal periods of equipment  
2494 downtime or preventive maintenance; and

2495 (3) The permittee submitted notices as required under Part II U 2.

2496 b. The department may approve an anticipated bypass, after considering its adverse  
2497 effects, if the department determines that it will meet the three conditions listed in Part  
2498 II U 3 a.

2499 V. Upset.

2500 1. An upset constitutes an affirmative defense to an action brought for noncompliance with  
2501 technology based permit effluent limitations if the requirements of Part II V 2 are met. A  
2502 determination made during administrative review of claims that noncompliance was  
2503 caused by upset, and before an action for noncompliance, is not a final administrative  
2504 action subject to judicial review.

2505 2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate,  
2506 through properly signed, contemporaneous operating logs, or other relevant evidence  
2507 that:

- 2508 a. An upset occurred and that the permittee can identify the causes of the upset;  
2509 b. The permitted facility was at the time being properly operated;  
2510 c. The permittee submitted notice of the upset as required in Part II I; and  
2511 d. The permittee complied with any remedial measures required under Part II S.

2512 3. In any enforcement proceeding the permittee seeking to establish the occurrence of an  
2513 upset has the burden of proof.

2514 W. Inspection and entry. The permittee shall allow the director, or an authorized  
2515 representative, including an authorized contractor acting as a representative of the administrator,  
2516 upon presentation of credentials and other documents as may be required by law, to:

- 2517 1. Enter on the permittee's premises where a regulated facility or activity is located or  
2518 conducted, or where records must be kept under the conditions of this permit;  
2519 2. Have access to and copy, at reasonable times, any records that must be kept under the  
2520 conditions of this permit;  
2521 3. Inspect at reasonable times any facilities, equipment (including monitoring and control  
2522 equipment), practices, or operations regulated or required under this permit; and  
2523 4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance  
2524 or as otherwise authorized by the Clean Water Act and the State Water Control Law, any  
2525 substances or parameters at any location.

2526 For purposes of this section, the time for inspection shall be deemed reasonable during  
2527 regular business hours, and whenever the facility is discharging. Nothing contained in this general  
2528 permit shall make an inspection unreasonable during an emergency.

2529 X. Permit actions. Permit coverages may be terminated for cause. The filing of a request by  
2530 the permittee for a permit termination or a notification of planned changes or anticipated  
2531 noncompliance does not stay any permit condition.

2532 Y. Transfer of permits.

- 2533 1. Permits are not transferable to any person except after notice to the department.  
2534 2. Coverage under this permit may be automatically transferred to a new permittee if:  
2535 a. The current permittee notifies the department within 30 days of the transfer of the  
2536 title to the facility or property, unless permission for a later date has been granted by  
2537 the department;  
2538 b. The notice includes a written agreement between the existing and new permittees  
2539 containing a specific date for transfer of permit responsibility, coverage, and liability  
2540 between them; and  
2541 c. The department does not notify the existing permittee and the proposed new  
2542 permittee of its intent to deny the new permittee coverage under the permit. If this  
2543 notice is not received, the transfer is effective on the date specified in the agreement  
2544 mentioned in Part II Y 2 b.

2545 Z. Severability. The provisions of this permit are severable, and if any provision of this permit  
2546 or the application of any provision of this permit to any circumstance, is held invalid, the application  
2547 of such provision to other circumstances, and the remainder of this permit, shall not be affected  
2548 thereby.

2549

Part V

2550 Chesapeake Bay Total Maximum Daily Load Compliance

2551 **9VAC25-151-400. Chesapeake Bay total maximum daily load compliance.**

2552 A. Chesapeake Bay TMDL Compliance. EPA's Chesapeake Bay TMDL (December 29, 2010)  
2553 includes wasteload allocations for VPDES permitted industrial stormwater facilities as part of the  
2554 regulated stormwater aggregate load. EPA used data submitted by Virginia with the Phase I  
2555 Chesapeake Bay TMDL Watershed Implementation Plan, including the number of industrial  
2556 stormwater permits per county and the number of urban acres regulated by industrial stormwater  
2557 permits, as part of their development of the aggregate load. Aggregate loads for industrial  
2558 stormwater facilities were appropriate because actual facility loading data were not available to  
2559 develop individual facility wasteload allocations.

2560 Virginia estimated the loadings from industrial stormwater facilities using actual and estimated  
2561 facility acreage information and total phosphorus (TP) and total nitrogen (TN) loading rates from  
2562 the Northern Virginia Planning District Commission (NVPDC) Guidebook for Screening Urban  
2563 Nonpoint Pollution Management Strategies (Annandale, VA November 1979), prepared for the  
2564 Metropolitan Washington Council of Governments. The loading rates used were as follows:

2565 TP - High (80%) imperviousness industrial; 1.5 lb/ac/yr

2566 TN - High (80%) imperviousness industrial; 12.3 lb/ac/yr

2567 Actual facility area information and TP and TN data collected for facilities subject to Part V of  
2568 this permit will be used by the department to quantify the nutrient and sediment loads from those  
2569 VPDES permitted industrial stormwater facilities.

2570 1. Facilities that obtained coverage under the 2019 industrial stormwater general permit  
2571 that demonstrated compliance with the Chesapeake Bay TMDL loading rates.

2572 Owners shall maintain documentation of their demonstration of compliance with the  
2573 Chesapeake Bay TMDL loading rates with the SWPPP and shall continue implementing  
2574 any BMPs that may have been developed as part of that demonstration.

2575 Documentation may include:

2576 a. Calculations submitted to the department indicating that reductions were not  
2577 necessary;

2578 b. A completed TMDL Action Plan, including a description of the means and methods,  
2579 such as management practices and retrofit programs that were utilized to meet the  
2580 required reductions;

2581 c. Other means accepted by the department indicating compliance with the  
2582 Chesapeake Bay TMDL loading rates.

2583 2. Facilities that obtained coverage under the 2019 industrial stormwater general permit  
2584 that did not demonstrate compliance with the Chesapeake Bay TMDL loading rates shall  
2585 submit a demonstration to the department.

2586 a. Owners of facilities that submitted a Chesapeake Bay TMDL action plan during the  
2587 2019 industrial stormwater general permit term that did not achieve reductions by the  
2588 end of the 2019 permit term shall update and resubmit their action plan to the  
2589 department for approval no later than 60 days following coverage under this general  
2590 permit. Permittees shall achieve 10% of the remaining reductions by December 31,  
2591 2024, and all remaining reductions by December 31, 2025. An annual report shall be  
2592 submitted to the department by June 30 of each year describing the progress in  
2593 meeting the interim and final reductions. A final report to demonstrate compliance shall  
2594 be submitted to the department no later than January 10, 2026. Documentation of

2595 compliance with the Chesapeake Bay TMDL loading rates shall be maintained with  
2596 the SWPPP.

2597 b. Owners of facilities that completed four samples for each outfall for TN and TP  
2598 during the 2019 industrial stormwater general permit term that did not submit  
2599 calculations by the end of the 2019 permit term shall utilize the procedures in Part V  
2600 D to calculate their facility stormwater loads. The permittee shall submit a copy of the  
2601 calculations, and a Chesapeake Bay TMDL action plan if required under Part V E, no  
2602 later than 60 days following coverage under this general permit to the DEQ regional  
2603 office serving the area where the industrial facility is located on a form provided by the  
2604 department. Reductions, if applicable, shall be achieved by December 31, 2025, and  
2605 an annual report shall be submitted to the department by June 30 of each year  
2606 describing the progress in meeting the required reductions until such time that the  
2607 demonstration is completed. The demonstration shall be submitted to the department  
2608 no later than January 10, 2026. Documentation of compliance with the Chesapeake  
2609 Bay TMDL loading rates shall be maintained with the SWPPP.

2610 c. Owners of facilities registered prior to July 1, 2022, that did not complete four  
2611 samples for each outfall for TN and TP by the end of the 2019 industrial stormwater  
2612 general permit term shall monitor their discharges for TN and TP to characterize the  
2613 contributions from their facility's specific industrial sector for these parameters. Total  
2614 nitrogen is the sum of total Kjeldahl nitrogen (TKN) and nitrite + nitrate and shall be  
2615 derived from the results of those tests. After the facility is granted coverage under the  
2616 permit, samples shall be collected during each of the first four quarters of permit  
2617 coverage. Samples shall be collected and analyzed in accordance with Part V B.  
2618 Monitoring results shall be reported in accordance with Part V C and Part II C, and  
2619 retained in accordance with Part II B. Calculations utilizing the procedures in Part V D,  
2620 and a Chesapeake Bay TMDL action plan if required under Part V E, shall be  
2621 submitted no later than 60 days following the completion of the fourth quarterly  
2622 monitoring period to the DEQ regional office serving the area where the industrial  
2623 facility is located on a form provided by the department. Reductions, if applicable, shall  
2624 be achieved by December 31, 2025, and an annual report shall be submitted to the  
2625 department by June 30 of each year describing the progress in meeting the required  
2626 reductions until such time that the demonstration is completed. The demonstration  
2627 shall be submitted to the department no later than January 10, 2026. Documentation  
2628 of compliance with the Chesapeake Bay TMDL loading rates shall be maintained with  
2629 the SWPPP.

2630 Facilities may use the applicable sampling data collected during the 2019 industrial  
2631 stormwater general permit term to satisfy all or part of the four monitoring periods  
2632 requirement in accordance with Part V A 2 c.

2633 d. Owners of facilities registered after June 30, 2022, that did not complete four  
2634 samples for each outfall for TN and TP by the end of the 2019 industrial stormwater  
2635 general permit term shall monitor their discharges in accordance with Part V A 3.

2636 Facilities may use the applicable sampling data collected during the 2019 industrial  
2637 stormwater general permit term to satisfy all or part of the four monitoring periods  
2638 requirements in accordance with Part V A 3.

2639 3. Facilities that obtain initial coverage under the 2024 industrial stormwater general  
2640 permit, but are not newly constructed facilities as identified in 9VAC25-151-60 C 13.

2641 Owners of facilities in the Chesapeake Bay watershed that obtain initial coverage  
2642 under the 2024 industrial stormwater general permit shall monitor their discharges for  
2643 TN and TP to characterize the contributions from their facility's specific industrial sector

2644 for these parameters. Total nitrogen is the sum of total Kjeldahl nitrogen (TKN) and  
2645 nitrite + nitrate and shall be derived from the results of those tests. After the facility is  
2646 granted coverage under the permit, samples shall be collected during each of the first  
2647 four quarters of permit coverage. Samples shall be collected and analyzed in  
2648 accordance with Part V B. Monitoring results shall be reported in accordance with Part  
2649 V C and Part II C, and retained in accordance with Part II B. Calculations utilizing the  
2650 procedures in Part V D and a Chesapeake Bay TMDL action plan if required under  
2651 Part V E shall be submitted no later than 60 days following the completion of the fourth  
2652 quarterly monitoring period to the DEQ regional office serving the area where the  
2653 industrial facility is located on a form provided by the department. Reductions, if  
2654 applicable, shall be achieved by two years following the end of the fourth quarterly  
2655 monitoring period, and an annual report shall be submitted to the department by June  
2656 30 of each year describing the progress in meeting the required reductions until such  
2657 time that the demonstration is completed. The demonstration shall be submitted to the  
2658 department no later than the 10th of the month directly following the two year period.  
2659 Documentation of compliance with the Chesapeake Bay TMDL loading rates shall be  
2660 maintained with the SWPPP.

2661 B. Monitoring instructions.

2662 1. Collection and analysis of samples. Sampling requirements shall be assessed on an  
2663 outfall by outfall basis. Samples shall be collected and analyzed in accordance with the  
2664 requirements of Part II A.

2665 2. When and how to sample. A minimum of one grab sample shall be taken from the  
2666 discharge associated with industrial activity resulting from a storm event that results in a  
2667 discharge from the site providing the interval from the preceding storm event discharge is  
2668 at least 72 hours. The 72-hour storm interval is waived if the permittee is able to document  
2669 that less than a 72-hour interval is representative for local storm events during the  
2670 sampling period. In the case of snowmelt, the monitoring shall be performed at a time  
2671 when a measurable discharge occurs at the site. For discharges from a stormwater  
2672 management structure, the monitoring shall be performed at a time when a measurable  
2673 discharge occurs from the structure.

2674 The grab sample shall be taken during the first 30 minutes of the discharge. If it is not  
2675 practicable to take the sample during the first 30 minutes, the sample may be taken during  
2676 the first three hours of the discharge, provided that the permittee explains why a grab  
2677 sample during the first 30 minutes was impracticable. This information shall be submitted  
2678 in the department's electronic discharge monitoring report (e-DMR) system and  
2679 maintained with the SWPPP. If the sampled discharge commingles with process or  
2680 nonprocess water, the permittee shall attempt to sample the stormwater discharge before  
2681 it mixes with the nonstormwater.

2682 3. Storm event data. For each monitoring event, except snowmelt monitoring, along with  
2683 the monitoring results, the permittee shall identify the date of the storm event sampled;  
2684 rainfall total (in inches) of the storm event that generated the sampled runoff; and the  
2685 interval between the storm event sampled and the end of the previous storm event  
2686 discharge. For snowmelt monitoring, the permittee shall identify the date of the sampling  
2687 event.

2688 4. Monitoring periods. Quarterly monitoring shall be conducted in each of the following  
2689 three-month periods: January through March, April through June, July through September,  
2690 and October through December.

2691 5. Documentation explaining a facility's inability to obtain a sample (including dates and  
2692 times the outfalls were viewed or sampling was attempted), of no rain event, or of deviation

2693 from the 72-hour storm interval shall be submitted with the e-DMR and maintained with  
 2694 the SWPPP. Acceptable documentation includes National Climatic Data Center (NCDC)  
 2695 weather station data, local weather station data, facility rainfall logs, and other appropriate  
 2696 supporting data.

2697 6. Representative outfalls may be used in accordance with Part I A 2 f.

2698 C. Reporting monitoring results.

2699 1. Reporting to the department. The permittee shall follow the reporting requirements and  
 2700 deadlines in Table 400-1 if required by Part V A 2 or A 3:

Table 400-1 Monitoring Reporting Requirements	
Quarterly Chesapeake Bay TMDL Monitoring	Submit the results by January 10, April 10, July 10, and October 10

2701 2. Permittees shall submit results for each outfall associated with industrial activity  
 2702 according to the requirements of Part II C.

2703 3. Significant digits. The permittee shall report at least the same number of significant  
 2704 digits as a numeric effluent limitation or TMDL wasteload allocation for a given parameter;  
 2705 otherwise, at least two significant digits shall be reported for a given parameter.  
 2706 Regardless of the rounding convention used by the permittee (i.e., five always rounding  
 2707 up or to the nearest even number), the permittee shall use the convention consistently  
 2708 and shall ensure that consulting laboratories employed by the permittee use the same  
 2709 convention.

2710 D. Calculation of facility loads.

2711 Permittees required to collect nutrient and sediment data in accordance with Part V A 2 or  
 2712 A 3 shall analyze the data collected to determine if pollution reductions are required. The  
 2713 permittee shall average the data collected at the facility for each of the pollutants of  
 2714 concern (POC) (e.g., TP and TN) and compare the results to the loading rates for TP and  
 2715 TN presented in Part V A.

2716 The following formula may be used to determine the loading rate:

2717 
$$L = 0.226 \times P \times P_j \times (0.05 + (0.9 \times I_a)) \times C$$

2718 where:

2719 L = the POC loading rate (lb/acre/year)

2720 P = the annual rainfall (inches/year) - The permittee may use either actual annual average  
 2721 rainfall data for the facility location (in inches/year), the Virginia annual average rainfall of  
 2722 44.3 inches/year, or another method approved by the department.

2723 P<sub>j</sub> = the fraction of annual events that produce runoff - The permittee shall use 0.9 unless  
 2724 the department approves another rate.

2725 I<sub>a</sub> = the impervious fraction of the facility impervious area of industrial activity to the facility  
 2726 industrial activity area.

2727 C = the POC average concentration of all facility samples (mg/L) - Facilities with multiple  
 2728 outfalls shall calculate a weighted average concentration for each outfall using the  
 2729 drainage area of each outfall.

2730 For total phosphorus, all daily concentration data below the quantitation level (QL) for the  
 2731 analytical method used shall be treated as half the QL. All daily concentration data equal  
 2732 to or above the QL for the analytical method used shall be treated as it is reported.

2733 For total nitrogen, if none of the daily concentration data for the respective species (i.e.,  
2734 TKN, nitrate, or nitrite) are equal to or above the QL for the respective analytical methods  
2735 used, the daily TN concentration value reported shall equal one half of the largest QL used  
2736 for the respective species. If one of the data is equal to or above the QL, the daily TN  
2737 concentration value shall be treated as that data point is reported. If more than one of the  
2738 data is above the QL, the daily TN concentration value shall equal the sum of the data  
2739 points as reported.

2740 Calculations shall be submitted to the department within 60 days from the end of the last  
2741 monitoring period that satisfies the monitoring requirements in Part V A 2 or A 3.  
2742 Calculations shall be submitted to the DEQ regional office serving the area where the  
2743 industrial facility is located, on a form provided by the department, and maintained with  
2744 the facility's SWPPP.

2745 Alternative calculations may be accepted on a case by case basis by the department to  
2746 accommodate facilities with outfalls that rarely discharge.

2747 E. Chesapeake Bay TMDL action plan requirements. For permittees required to submit  
2748 calculations in accordance with Part V D, if the calculated facility loading rate for TP or TN is  
2749 above the loading rates for TP or TN presented in Part V A, then the permittee shall develop and  
2750 submit a Chesapeake Bay TMDL action plan to the department.

2751 The Chesapeake Bay TMDL action plan shall be submitted on a form provided by the  
2752 department to the regional office serving the area where the industrial facility is located within 60  
2753 days following the completion of the fourth quarterly monitoring period. A copy of the current  
2754 Chesapeake Bay TMDL action plan and all facility loading rate calculations shall be maintained  
2755 with the facility's SWPPP. The Chesapeake Bay TMDL action plan shall include:

2756 1. A determination of the total pollutant load reductions for TP and TN (as appropriate)  
2757 necessary to reduce the annual loads from industrial activities. This shall be determined  
2758 by multiplying the industrial average times the difference between the TMDL loading rates  
2759 listed in Part V A and the actual facility loading rates calculated in accordance with Part V  
2760 D. The reduction applies to the total difference calculated for each pollutant of concern;  
2761 and

2762 2. The means and methods, such as management practices and retrofit programs that will  
2763 be utilized to meet the required reductions determined in Part V E 1 and a schedule to  
2764 achieve those reductions by the applicable deadline set in Part V A 2 or A 3. Pollutant  
2765 reductions may be achieved using a combination of the following alternatives:

2766 a. Reductions provided by one or more of the BMPs from the Virginia Stormwater BMP  
2767 Clearinghouse listed in ~~9VAC25-870-65~~ 9VAC25-875-590, approved BMPs found on  
2768 the Virginia Stormwater Clearinghouse website, or BMPs approved by the  
2769 Chesapeake Bay Program. Any BMPs implemented to provide the required pollutant  
2770 reductions shall be incorporated in the SWPPP and be permanently maintained by the  
2771 permittee;

2772 b. Implementation of site-specific BMPs followed by a minimum of four stormwater  
2773 samples collected in accordance with sampling requirements in Part I B 8 a that  
2774 demonstrate pollutant loadings have been reduced below those calculated under Part  
2775 I B 8 c. Any BMPs implemented to provide the required pollutant reductions shall be  
2776 incorporated in the SWPPP and be permanently maintained by the permittee; or

2777 c. Acquisition of nonpoint source credits certified by the board as perpetual in  
2778 accordance with § 62.1-44.19:20 of the Code of Virginia.

2779

**2780 9VAC25-210-60. Exclusions.**

**2781** The activities in this section do not require a VWP permit but may require other permits under  
**2782** state and federal law. Upon request by the department, any person claiming one of these  
**2783** exclusions shall demonstrate to the satisfaction of the department that he qualifies for the  
**2784** exclusion. Exclusions pertaining to surface water withdrawals are established in 9VAC25-210-  
**2785** 310.

**2786** 1. Discharges of dredged or fill material into state waters, except wetlands, which are  
**2787** addressed under a USACE Regional, General, or Nationwide Permit, and for which no §  
**2788** 401 Water Quality Certificate is required.

**2789** 2. Any discharge of stormwater from municipal separate storm sewer systems or land  
**2790** disturbing activities authorized by ~~9VAC25-870~~ 9VAC25-875, or the discharge of sewage,  
**2791** industrial wastes, or other wastes or any noxious or deleterious substances into surface  
**2792** waters that is authorized by a Virginia Pollutant Discharge Elimination System (VPDES)  
**2793** permit in accordance with 9VAC25-31 or a Virginia Pollution Abatement (VPA) permit in  
**2794** accordance with 9VAC25-32.

**2795** 3. Any activity governed under Chapter 13 (§ 28.2-1300 et seq.) of Title 28.2 of the Code  
**2796** of Virginia, unless state certification is required by § 401 of the Clean Water Act. State  
**2797** certification is waived if the activity meets the provisions of subdivision 10 a of this section.  
**2798** The activity does not require a VWP permit pursuant to § 62.1-44.15:21 G of the Code of  
**2799** Virginia.

**2800** 4. Normal residential gardening and lawn and landscape maintenance in a wetland, or  
**2801** other similar activity, that is incidental to an occupant's ongoing residential use of property  
**2802** and is of minimal ecological impact. The criteria governing this exclusion are set forth in  
**2803** the definition of "normal residential gardening and lawn and landscape maintenance" in  
**2804** 9VAC25-210-10.

**2805** 5. Maintenance of currently serviceable structures, such as purpose-built stormwater and  
**2806** utility structures, transportation structures, dikes, groins, levees, dams, riprap  
**2807** breakwaters, causeways, or bridge abutments or approaches. Maintenance includes the  
**2808** emergency reconstruction of recently damaged parts but does not include modifications  
**2809** that change the character, scope, or size of the original design. If the original design is not  
**2810** available, the permittee shall submit the best available information on the design for  
**2811** consideration and approval by the department. In order to qualify for this exclusion,  
**2812** emergency reconstruction shall occur as soon as practicable after damage occurs.

**2813** 6. Impacts to open waters that do not have a detrimental effect on public health, animal  
**2814** life, or aquatic life or to the uses of such waters for domestic or industrial consumption,  
**2815** recreation, or other uses.

**2816** 7. Flooding or back-flooding impacts to surface waters resulting from the construction of  
**2817** temporary sedimentation basins on a construction site when such structures are  
**2818** necessary for erosion and sediment control or stormwater management purposes.

**2819** 8. Normal agriculture and silviculture activities in a wetland such as plowing; seeding;  
**2820** cultivating; minor drainage and harvesting for the production of food, fiber, and forest  
**2821** products; or upland soil and water conservation practices.

**2822** a. To fall under this exclusion, the activities specified in this subdivision 8 must be part  
**2823** of an established (i.e., ongoing) agriculture or silviculture operation, and must be in  
**2824** accordance with applicable best management practices set forth in either Forestry  
**2825** Best Management Practices for Water Quality in Virginia Technical Guide (Fourth  
**2826** Edition, July 2002) or Virginia Agricultural BMP Manual (2000), which facilitate  
**2827** compliance with the § 404(b)(1) Guidelines (40 CFR Part 230). Activities on areas

2828 lying fallow as part of a conventional, rotational cycle are part of an established  
2829 operation.

2830 b. Activities which bring a new area into agricultural or silvicultural use are not part of  
2831 an established operation. An operation ceases to be established when the area in  
2832 which it was conducted has been converted to another use or has lain idle so long that  
2833 modifications to the hydrological regime are necessary to resume operation. If the  
2834 activity takes place outside surface waters, it does not need a VWP permit, whether  
2835 or not it is part of an established agriculture or silviculture operation.

2836 c. For the purposes of this subdivision 8, cultivating, harvesting, minor drainage,  
2837 plowing, and seeding are defined as follows:

2838 (1) "Cultivating" means physical methods of soil treatment employed within  
2839 established agriculture and silviculture lands on farm or forest crops to aid and improve  
2840 their growth, quality, or yield.

2841 (2) "Harvesting" means physical measures employed directly upon farm, forest, or  
2842 crops within established agricultural and silviculture lands to bring about their removal  
2843 from farm or forest land, but does not include the construction of farm or forest roads.

2844 (3) "Minor drainage" means:

2845 (a) The discharge of dredged or fill material incidental to connecting upland drainage  
2846 facilities to surface waters, adequate to effect the removal of excess soil moisture from  
2847 upland croplands. Construction and maintenance of upland (dryland) facilities, such  
2848 as ditching and tiling, incidental to the planting, cultivating, protecting, or harvesting of  
2849 crops;

2850 (b) The discharge of dredged or fill material for the purpose of installing ditching or  
2851 other water control facilities incidental to planting, cultivating, protecting, or harvesting  
2852 of rice, or other wetland crop species, where these activities and the discharge occur  
2853 in surface waters which are in established use for such agricultural and silviculture  
2854 wetland crop production;

2855 (c) The discharge of dredged or fill material for the purpose of manipulating the water  
2856 levels of, or regulating the flow or distribution of water within, existing impoundments  
2857 that have been constructed in accordance with applicable requirements of the Clean  
2858 Water Act, and that are in established use for the production of rice, or other wetland  
2859 crop species;

2860 (d) The discharge of dredged or fill material incidental to the emergency removal of  
2861 sandbars, gravel bars, or other similar blockages which are formed during flood flows  
2862 or other events, where such blockages close or constrict previously existing  
2863 drainageways and, if not promptly removed, would result in damage to or loss of  
2864 existing crops or would impair or prevent the plowing, seeding, harvesting, or  
2865 cultivating of crops on land in established use for crop production. Such removal does  
2866 not include enlarging or extending the dimensions of, or changing the bottom  
2867 elevations of, the affected drainageway as it existed prior to the formation of the  
2868 blockage. Removal must be accomplished within one year after such blockages are  
2869 discovered in order to be eligible for exclusion; and

2870 (e) Minor drainage in surface waters is limited to drainage within areas that are part of  
2871 an established agriculture or silviculture operation. It does not include drainage  
2872 associated with the immediate or gradual conversion of a wetland to a nonwetland (for  
2873 example, wetland species to upland species not typically adapted to life in saturated  
2874 soil conditions), or conversion from one wetland use to another (for example,  
2875 silviculture to agriculture). In addition, minor drainage does not include the construction

2876 of any canal, ditch, dike, or other waterway or structure which drains or otherwise  
2877 significantly modifies a stream, lake, swamp, bog, or any other wetland or aquatic area  
2878 constituting surface water. Any discharge of dredged or fill material into surface water  
2879 incidental to the construction of any such structure or waterway requires a VWP permit,  
2880 unless otherwise excluded or exempted by this chapter.

2881 (4) "Plowing" means all forms of primary tillage, including moldboard, chisel, or wide-  
2882 blade plowing, discing, harrowing, and similar physical means used on farm or forest  
2883 land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the  
2884 planting of crops. Plowing does not include the redistribution of soil, rock, sand, or  
2885 other surficial materials in a manner which changes any area of surface water to dry  
2886 land. For example, the redistribution of surface materials by blading, grading, or other  
2887 means to fill in wetland areas is not plowing. Rock crushing activities which result in  
2888 the loss of natural drainage characteristics, the reduction of water storage and  
2889 recharge capabilities, or the overburden of natural water filtration capacities does not  
2890 constitute plowing. Plowing as described above will never involve a discharge of  
2891 dredged or fill material.

2892 (5) "Seeding" means the sowing of seed and placement of seedlings to produce farm  
2893 or forest crops and includes the placement of soil beds for seeds or seedlings on  
2894 established farm and forest lands.

2895 9. Discharges of dredged or fill material into wetlands when addressed under a U.S. Army  
2896 Corps of Engineers Regional, General, or Nationwide Permit and that meet the provisions  
2897 of subdivision 10 a of this section.

2898 10. Construction or maintenance of farm ponds or impoundments, stock ponds or  
2899 impoundments, or irrigation ditches, or the maintenance (but not construction) of drainage  
2900 ditches.

2901 a. The exclusion for the construction and maintenance of farm or stock ponds and farm  
2902 or stock impoundments applies to those structures that are operated for normal  
2903 agricultural or silvicultural purposes, and are less than 25 feet in height or create a  
2904 maximum impoundment capacity smaller than 100 acre-feet.

2905 b. The exclusion for the construction and maintenance of farm or stock ponds and farm  
2906 or stock impoundments does not include the impacts associated with the withdrawal  
2907 of surface water from, within, or behind such structures. A VWP permit may be  
2908 required for the surface water withdrawal.

2909 c. Discharge associated with siphons, pumps, headgates, wingwalls, weirs, diversion  
2910 structures, and such other facilities as are appurtenant and functionally related to  
2911 irrigation ditches are included in this exclusion.

2912 d. The maintenance dredging of existing ditches is included in this exclusion provided  
2913 that the final dimensions of the maintained ditch do not exceed the average  
2914 dimensions of the original ditch. This exclusion does not apply to the construction of  
2915 new ditches or to the channelization of streams.

2916 11. Construction or maintenance of farm roads, forest roads, or temporary roads for  
2917 moving mining equipment, where such roads are constructed and maintained in  
2918 accordance with applicable best management practices (BMPs) set forth in either Forestry  
2919 Best Management Practices for Water Quality in Virginia, Technical Guide, Fourth Edition,  
2920 July 2002, or Virginia Agricultural BMP Manual, 2000, to ensure that flow and circulation  
2921 patterns and chemical and biological characteristics of surface waters are not impaired,  
2922 that the reach of such waters is not reduced, and that any adverse effect on the aquatic  
2923 environment will otherwise be minimized. The BMPs which must be applied to satisfy this  
2924 provision include the following baseline provisions:

- 2925 a. Permanent roads (for agriculture or forestry activities), temporary access roads (for  
2926 mining, forestry, or farm purposes), and skid trails (for logging) in surface waters shall  
2927 be held to the minimum feasible number, width, and total length consistent with the  
2928 purpose of specific agriculture, silviculture or mining operations, and local topographic  
2929 and climatic conditions;
- 2930 b. All roads, temporary or permanent, shall be located sufficiently far from streams or  
2931 other water bodies (except for portions of such roads which must cross water bodies)  
2932 to minimize discharges of dredged or fill material into surface waters;
- 2933 c. The road fill shall be bridged, piped, culverted, or otherwise designed to prevent the  
2934 restriction of expected flood flows;
- 2935 d. The fill shall be properly stabilized and maintained to prevent erosion during and  
2936 following construction;
- 2937 e. Discharges of dredged or fill material into surface waters to construct road fill shall  
2938 be made in a manner which minimizes the encroachment of trucks, tractors,  
2939 bulldozers, or other heavy equipment within state waters (including adjacent wetlands)  
2940 that lie outside the lateral boundaries of the fill itself;
- 2941 f. In designing, constructing, and maintaining roads, vegetative disturbance in surface  
2942 waters shall be kept to a minimum;
- 2943 g. The design, construction, and maintenance of the road crossing shall not disrupt  
2944 the migration or other movement of those species of aquatic life inhabiting the water  
2945 body;
- 2946 h. Borrow material shall be taken from upland sources whenever feasible;
- 2947 i. The discharge shall not take, or jeopardize the continued existence of a state-listed  
2948 or federally-listed threatened or endangered species as defined under the Endangered  
2949 Species Act (16 USC § 1531 et seq.), in § 29.1-566 of the Code of Virginia and in  
2950 4VAC15-20-130 B and C, except as provided in § 29.1-568 of the Code of Virginia, or  
2951 adversely modify or destroy the critical habitat of such species;
- 2952 j. Discharges into the nesting and breeding areas for migratory waterfowl, spawning  
2953 areas, and wetlands shall be avoided if practical on-site or off-site alternatives exist;
- 2954 k. The discharge shall not be located in proximity of a public water supply or intake;
- 2955 l. The discharge shall not occur in areas of concentrated shellfish production;
- 2956 m. The discharge shall not occur in a component to the National Wild and Scenic River  
2957 System;
- 2958 n. The discharge material shall consist of suitable material free from toxic pollutants in  
2959 toxic amounts; and
- 2960 o. All temporary fills shall be removed in their entirety and the area restored to its  
2961 original elevation.

2962 12. Wetland and open water impacts to a stormwater management facility that was  
2963 created on dry land for the purpose of conveying, treating, or storing stormwater.

2964 **9VAC25-830-40. Definitions.**

2965 The following words and terms used in this chapter have the following meanings, unless the  
2966 context clearly indicates otherwise. In addition, some terms not defined herein are defined in §  
2967 62.1-44.15:68 of the Act.

2968 "Act" means the Chesapeake Bay Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of  
2969 Chapter 3.1 of Title 62.1 of the Code of Virginia.

2970 "Adaptation measure" means a project, practice, or approach to mitigate or address an impact  
2971 of climate change including sea-level rise, storm surge, and flooding including increased or  
2972 recurrent flooding.

2973 "Best management practice" means a practice, or combination of practices, that is determined  
2974 by a state or designated area-wide planning agency to be the most effective, practicable means  
2975 of preventing or reducing the amount of pollution generated by nonpoint sources to a level  
2976 compatible with water quality goals.

2977 "Board" means the State Water Control Board. When used outside the context of the  
2978 promulgation of regulations, including regulations to establish general permits, "board" means the  
2979 Department of Environmental Quality.

2980 "Buffer area" means an area of natural or established vegetation managed to protect other  
2981 components of a Resource Protection Area and state waters from significant degradation due to  
2982 land disturbances.

2983 "Canopy tree" means a tree that typically reaches 35 feet in height or taller when mature.

2984 "Chesapeake Bay Preservation Area" means any land designated by a local government  
2985 pursuant to Part III (9VAC25-830-70 et seq.) of this chapter and § 62.1-44.15:74 of the Act. A  
2986 Chesapeake Bay Preservation Area shall consist of a Resource Protection Area and a Resource  
2987 Management Area.

2988 "Daylighted stream" means a stream that had been previously diverted into an underground  
2989 drainage system and has been redirected into an aboveground channel using natural channel  
2990 design concepts as defined in § 62.1-44.15:51 of the Code of Virginia, and where the adjacent  
2991 lands would meet the criteria for being designated as a Resource Protection Area (RPA) as  
2992 defined by the department under this chapter.

2993 "Department" or "DEQ" means the Department of Environmental Quality.

2994 "Development" means the construction or substantial alteration of residential, commercial,  
2995 industrial, institutional, recreation, transportation, or utility facilities or structures.

2996 "Director" means the Director of the Department of Environmental Quality.

2997 "Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and  
2998 Stormwater Management Program" means Article 2.4 (§ 62.1-44.15:51 et seq.) of Chapter 3.1 of  
2999 Title 62.1 of the Code of Virginia.

3000 "Floodplain" means all lands that would be inundated by flood water as a result of a storm  
3001 event of a 100-year return interval.

3002 "Highly erodible soils" means soils (excluding vegetation) with an erodibility index (EI) from  
3003 sheet and rill erosion equal to or greater than eight. The erodibility index for any soil is defined as  
3004 the product of the formula  $RKLS/T$ , where K is the soil susceptibility to water erosion in the surface  
3005 layer; R is the rainfall and runoff; LS is the combined effects of slope length and steepness; and  
3006 T is the soil loss tolerance.

3007 "Highly permeable soils" means soils with a given potential to transmit water through the soil  
3008 profile. Highly permeable soils are identified as any soil having a permeability equal to or greater  
3009 than six inches of water movement per hour in any part of the soil profile to a depth of 72 inches  
3010 (permeability groups "rapid" and "very rapid") as found in the "National Soil Survey Handbook" of  
3011 November 1996 in the "Field Office Technical Guide" of the U.S. Department of Agriculture  
3012 Natural Resources Conservation Service.

3013 "Impervious cover" means a surface composed of any material that significantly impedes or  
3014 prevents natural infiltration of water into the soil. Impervious surfaces include roofs, buildings,  
3015 streets, parking areas, and any concrete, asphalt or compacted gravel surface.

3016 "Infill" means utilization of vacant land in previously developed areas.

3017 "Intensely Developed Areas" means those areas designated by the local government  
3018 pursuant to 9VAC25-830-100.

3019 "Local governments" means counties, cities, and towns. This chapter applies to local  
3020 governments in Tidewater Virginia, as defined in § 62.1-44.15:68 of the Act, but the provisions of  
3021 this chapter may be used by other local governments.

3022 "Local program" means the measures by which a local government complies with the Act and  
3023 this chapter.

3024 "Local program adoption date" means the date a local government meets the requirements of  
3025 subdivisions 1 and 2 of 9VAC25-830-60.

3026 "Mature tree" means a canopy tree with a diameter at breast height (DBH) of 12 inches or  
3027 greater or an understory tree with a DBH of four inches or greater.

3028 "Nature-based solution" means an approach that reduces the impacts of sea-level rise,  
3029 flooding and storm events through the use of environmental processes and natural systems.

3030 "Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or  
3031 saturated by surface or ground water at a frequency and duration sufficient to support, and that  
3032 under normal circumstances do support, a prevalence of vegetation typically adapted for life in  
3033 saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to §  
3034 404 of the federal Clean Water Act in 33 CFR 328.3b.

3035 "Plan of development" means any process for site plan review in local zoning and land  
3036 development regulations designed to ensure compliance with § 62.1-44.15:74 of the Act and this  
3037 chapter, prior to issuance of a building permit.

3038 "Public road" means a publicly owned road designed and constructed in accordance with  
3039 water quality protection criteria at least as stringent as requirements applicable to the Virginia  
3040 Department of Transportation, including regulations promulgated pursuant to (i) the Erosion and  
3041 Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater  
3042 Management Program and (ii) the Virginia Erosion and Stormwater Management Act. This  
3043 definition includes those roads where the Virginia Department of Transportation exercises direct  
3044 supervision over the design or construction activities, or both, and cases where secondary roads  
3045 are constructed or maintained, or both, by a local government in accordance with the standards  
3046 of that local government.

3047 "Redevelopment" means the process of developing land that is or has been previously  
3048 developed.

3049 "Resource Management Area" means that component of the Chesapeake Bay Preservation  
3050 Area that is not classified as the Resource Protection Area.

3051 "Resource Protection Area" means that component of the Chesapeake Bay Preservation Area  
3052 comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality  
3053 value due to the ecological and biological processes they perform or are sensitive to impacts that  
3054 may result in significant degradation to the quality of state waters.

3055 "Silvicultural activities" means forest management activities, including the harvesting of  
3056 timber, the construction of roads and trails for forest management purposes, and the preparation  
3057 of property for reforestation that are conducted in accordance with the silvicultural best  
3058 management practices developed and enforced by the State Forester pursuant to § 10.1-1105 of  
3059 the Code of Virginia and are located on property defined as real estate devoted to forest use  
3060 under § 58.1-3230 of the Code of Virginia.

3061 "Substantial alteration" means expansion or modification of a building or development that  
3062 would result in a disturbance of land exceeding an area of 2,500 square feet in the Resource  
3063 Management Area only.

3064 "Tidal shore" or "shore" means land contiguous to a tidal body of water between the mean low  
3065 water level and the mean high water level.

3066 "Tidal wetlands" means vegetated and nonvegetated wetlands as defined in § 28.2-1300 of  
3067 the Code of Virginia.

3068 "Tidewater Virginia" means those jurisdictions named in § 62.1-44.15:68 of the Act.

3069 "Understory tree" means a tree that typically reaches 12 feet to 35 feet in height when mature.

3070 "Use" means an activity on the land other than development including agriculture, horticulture  
3071 and silviculture.

3072 "Virginia Erosion and Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et  
3073 seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

3074 "Water-dependent facility" means a development of land that cannot exist outside of the  
3075 Resource Protection Area and must be located on the shoreline by reason of the intrinsic nature  
3076 of its operation. These facilities include (i) ports; (ii) the intake and outfall structures of power  
3077 plants, water treatment plants, sewage treatment plants, and storm sewers; (iii) marinas and other  
3078 boat docking structures; (iv) beaches and other public water-oriented recreation areas; and (v)  
3079 fisheries or other marine resources facilities.

3080 **9VAC25-830-130. General performance criteria.**

3081 Through their applicable land use ordinances, regulations, and enforcement mechanisms,  
3082 local governments shall require that any use, development, or redevelopment of land in  
3083 Chesapeake Bay Preservation Areas meets the following performance criteria:

3084 1. No more land shall be disturbed than is necessary to provide for the proposed use or  
3085 development.

3086 2. Indigenous vegetation shall be preserved to the maximum extent practicable, consistent  
3087 with the use or development proposed. Mature trees shall be protected during  
3088 development and only removed where necessary, including to provide for the proposed  
3089 use or development.

3090 A locality which has an ordinance providing for the conservation, planting, and  
3091 replacement of trees during the land development process pursuant to § 15.2-961 or 15.2-  
3092 961.1 of the Code of Virginia may rely on such ordinance for demonstrating compliance  
3093 with this requirement related to mature trees in Resource Management Areas.

3094 3. All development exceeding 2,500 square feet of land disturbance shall be accomplished  
3095 through a plan of development review process consistent with § 15.2-2286 A 8 of the Code  
3096 of Virginia and subdivision 1 e of 9VAC25-830-240.

3097 4. Land development shall minimize impervious cover consistent with the proposed use  
3098 or development.

3099 5. Any land disturbing activity that exceeds an area of 2,500 square feet (including  
3100 construction of all single family houses, septic tanks, and drainfields, but otherwise as  
3101 defined in §§ ~~62.1-44.15:24~~ or 62.1-44.15:51 of the Code of Virginia) shall comply with the  
3102 requirements of the local erosion and sediment control program ordinance or erosion and  
3103 stormwater management program ordinance. Enforcement for noncompliance with the  
3104 erosion and sediment control requirements referenced in this criterion shall be conducted  
3105 under the provisions of the Erosion and Sediment State Water Control Law, §62.1-44.2 et  
3106 seq. of the Code of Virginia and attendant regulations.

3107 6. Any Land-disturbing activities in a Chesapeake Bay Preservation Act land-disturbing  
3108 activity as defined in § 62.1-44.15:24 of the Code of Virginia Area that are equal to or  
3109 greater than 2,500 square feet but less than one acre shall comply with the requirements  
3110 of 9VAC25-870-51 and 9VAC25-870-103 9VAC25-875-740 and 9VAC25-875-750.

3111 7. Onsite sewage treatment systems not requiring a Virginia Pollutant Discharge  
3112 Elimination System (VPDES) permit shall:

3113 a. Have pump-out accomplished for all such systems at least once every five years.

3114 (1) If deemed appropriate by the local health department and subject to conditions the  
3115 local health department may set, local governments may offer to the owners of such  
3116 systems, as an alternative to the mandatory pump-out, the option of having a plastic  
3117 filter installed and maintained in the outflow pipe from the septic tank to filter solid  
3118 material from the effluent while sustaining adequate flow to the drainfield to permit  
3119 normal use of the septic system. Such a filter should satisfy standards established in  
3120 the Sewage Handling and Disposal Regulations (12VAC5-610) administered by the  
3121 Virginia Department of Health.

3122 (2) Furthermore, in lieu of requiring proof of septic tank pump-out every five years,  
3123 local governments may allow owners of onsite sewage treatment systems to submit  
3124 documentation every five years, certified by an operator or onsite soil evaluator  
3125 licensed or certified under Chapter 23 (§ 54.1-2300 et seq.) of Title 54.1 of the Code  
3126 of Virginia as being qualified to operate, maintain, or design onsite sewage systems,  
3127 that the septic system has been inspected, is functioning properly, and the tank does  
3128 not need to have the effluent pumped out of it.

3129 (3) Effective July 1, 2023, requirements of this section directly related to compliance  
3130 with onsite sewage system pump-outs shall be managed and enforced by the Virginia  
3131 Department of Health in Accomack, Essex, Gloucester, King and Queen, King William,  
3132 Lancaster, Mathews, Middlesex, Northampton, Northumberland, Richmond, and  
3133 Westmoreland Counties, and the incorporated towns within those counties.

3134 b. For new construction, provide a reserve sewage disposal site with a capacity at  
3135 least equal to that of the primary sewage disposal site. This reserve sewage disposal  
3136 site requirement shall not apply to any lot or parcel recorded prior to October 1, 1989,  
3137 if the lot or parcel is not sufficient in capacity to accommodate a reserve sewage  
3138 disposal site, as determined by the local health department. Building shall be  
3139 prohibited on the area of all sewage disposal sites until the structure is served by public  
3140 sewer or an onsite sewage treatment system that operates under a permit issued by  
3141 the department. All sewage disposal site records shall be administered to provide  
3142 adequate notice and enforcement. As an alternative to the 100% reserve sewage  
3143 disposal site, local governments may offer the owners of such systems the option of  
3144 installing an alternating drainfield system meeting the following conditions:

3145 (1) Each of the two alternating drainfields in the system shall have, at a minimum, an  
3146 area not less than 50% of the area that would otherwise be required if a single primary  
3147 drainfield were constructed.

3148 (2) An area equaling 50% of the area that would otherwise be required for the primary  
3149 drainfield site must be reserved for subsurface absorption systems that utilize a flow  
3150 diversion device, in order to provide for future replacement or repair to meet the  
3151 requirements for a sewage disposal system. Expansion of the primary system will  
3152 require an expansion of this reserve area.

3153 (3) The two alternating drainfields shall be connected by a diversion valve, approved  
3154 by the local health department, located in the pipe between the septic (aerobic) tank  
3155 and the distribution boxes. The diversion valve shall be used to alternate the direction  
3156 of effluent flow to one drainfield or the other at a time. However, diversion valves shall  
3157 not be used for the following types of treatment systems:

3158 (a) Sand mounds;

3159 (b) Low-pressure distribution systems;  
3160 (c) Repair situations when installation of a valve is not feasible; and  
3161 (d) Any other approved system for which the use of a valve would adversely affect the  
3162 design of the system, as determined by the local health department.

3163 (4) The diversion valve shall be a three-port, two-way valve of approved materials (i.e.,  
3164 resistant to sewage and leakproof and designed so that the effluent from the tank can  
3165 be directed to flow into either one of the two distribution boxes).

3166 (5) There shall be a conduit from the top of the valve to the ground surface with an  
3167 appropriate cover to be level with or above the ground surface.

3168 (6) The valve shall not be located in driveways, recreational courts, parking lots, or  
3169 beneath sheds or other structures.

3170 (7) In lieu of the aforementioned diversion valve, any device that can be designed and  
3171 constructed to conveniently direct the flow of effluent from the tank into either one of  
3172 the two distribution boxes may be approved if plans are submitted to the local health  
3173 department and found to be satisfactory.

3174 (8) The local government shall require that the owner alternate the drainfields every  
3175 12 months to permit the yearly resting of half of the absorption system.

3176 (9) The local government shall ensure that the owner are notified annually of the  
3177 requirement to switch the valve to the opposite drainfield.

3178 8. Land upon which agricultural activities are being conducted, including crop production,  
3179 pasture, and dairy and feedlot operations, or lands otherwise defined as agricultural land  
3180 by the local government, shall have a soil and water quality conservation assessment  
3181 conducted that evaluates the effectiveness of existing practices pertaining to soil erosion  
3182 and sediment control, nutrient management, and management of pesticides, and, where  
3183 necessary, results in a plan that outlines additional practices needed to ensure that water  
3184 quality protection is being accomplished consistent with the Act and this chapter.

3185 a. Recommendations for additional conservation practices need address only those  
3186 conservation issues applicable to the tract or field being assessed. Any soil and water  
3187 quality conservation practices that are recommended as a result of such an  
3188 assessment and are subsequently implemented with financial assistance from federal  
3189 or state cost-share programs must be designed, consistent with cost-share practice  
3190 standards effective in January 1999 in the "Field Office Technical Guide" of the U.S.  
3191 Department of Agriculture Natural Resource Conservation Service or the June 2000  
3192 edition of the "Virginia Agricultural BMP Manual" of the Virginia Department of  
3193 Conservation and Recreation, respectively. Unless otherwise specified in this section,  
3194 general standards pertaining to the various agricultural conservation practices being  
3195 assessed shall be as follows:

3196 (1) For erosion and sediment control recommendations, the goal shall be, where  
3197 feasible, to prevent erosion from exceeding the soil loss tolerance level, referred to as  
3198 "T," as defined in the "National Soil Survey Handbook" of November 1996 in the "Field  
3199 Office Technical Guide" of the U.S. Department of Agriculture Natural Resource  
3200 Conservation Service. However, in no case shall erosion exceed the soil loss  
3201 consistent with an Alternative Conservation System, referred to as an "ACS", as  
3202 defined in the "Field Office Technical Guide" of the U.S. Department of Agriculture  
3203 Natural Resource Conservation Service.

3204 (2) For nutrient management, whenever nutrient management plans are developed,  
3205 the operator or landowner must provide soil test information, consistent with the  
3206 Virginia Nutrient Management Training and Certification Regulations (4VAC50-85).

3207 (3) For pest chemical control, referrals shall be made to the local cooperative extension  
3208 agent or an Integrated Pest Management Specialist of the Virginia Cooperative  
3209 Extension Service. Recommendations shall include copies of applicable information  
3210 from the "Virginia Pest Management Guide" or other Extension materials related to  
3211 pest control.

3212 b. A higher priority shall be placed on conducting assessments of agricultural fields  
3213 and tracts adjacent to Resource Protection Areas. However, if the landowner or  
3214 operator of such a tract also has Resource Management Area fields or tracts in his  
3215 operation, the assessment for that landowner or operator may be conducted for all  
3216 fields or tracts in the operation. When such an expanded assessment is completed,  
3217 priority must return to Resource Protection Area fields and tracts.

3218 c. The findings and recommendations of such assessments and any resulting soil and  
3219 water quality conservation plans will be submitted to the local Soil and Water  
3220 Conservation District Board, which will be the plan-approving authority.

3221 9. Silvicultural activities in Chesapeake Bay Preservation Areas are exempt from this  
3222 chapter provided that silvicultural operations adhere to water quality protection procedures  
3223 prescribed by the Virginia Department of Forestry in the Fifth Edition (March 2011) of  
3224 "Virginia's Forestry Best Management Practices for Water Quality Technical Manual." The  
3225 Virginia Department of Forestry will oversee and document installation of best  
3226 management practices and will monitor in-stream impacts of forestry operations in  
3227 Chesapeake Bay Preservation Areas.

3228 10. Local governments shall require evidence of all wetlands permits required by law prior  
3229 to authorizing grading or other onsite activities to begin.

3230 **9VAC25-830-140. Development criteria for Resource Protection Areas.**

3231 In addition to the general performance criteria set forth in 9VAC25-830-130, the criteria in this  
3232 section are applicable in Resource Protection Areas.

3233 1. Land development may be allowed in the Resource Protection Area, subject to approval  
3234 by the local government, only if it (i) is water dependent; (ii) constitutes redevelopment;  
3235 (iii) constitutes development or redevelopment within a designated Intensely Developed  
3236 Area; (iv) is a new use established pursuant to subdivision 4 a of this section; (v) is a road  
3237 or driveway crossing satisfying the conditions set forth in subdivision 1 d of this section;  
3238 or (vi) is a flood control or stormwater management facility satisfying the conditions set  
3239 forth in subdivision 1 e of this section.

3240 a. A water quality impact assessment in accordance with subdivision 6 of this section  
3241 shall be required for any proposed land disturbance.

3242 b. A new or expanded water-dependent facility may be allowed provided that the  
3243 following criteria are met:

3244 (1) It does not conflict with the comprehensive plan;

3245 (2) It complies with the performance criteria set forth in 9VAC25-830-130;

3246 (3) Any nonwater-dependent component is located outside of Resource Protection  
3247 Areas; and

3248 (4) Access to the water-dependent facility will be provided with the minimum  
3249 disturbance necessary. Where practicable, a single point of access will be provided.

3250 c. Redevelopment outside locally designated Intensely Developed Areas shall be  
3251 permitted in the Resource Protection Area only if there is no increase in the amount of  
3252 impervious cover and no further encroachment within the Resource Protection Area,  
3253 and it shall conform to applicable erosion and sediment control and stormwater

3254 management criteria set forth in the Erosion and Sediment Control Law for Localities  
3255 Not Administering a Virginia Erosion and Stormwater Management Program and the  
3256 Virginia Erosion and Stormwater Management Act and their attendant regulations, as  
3257 well as all applicable stormwater management requirements of other state and federal  
3258 agencies.

3259 d. Roads and driveways not exempt under subdivision B 1 of 9VAC25-830-150 and  
3260 which, therefore, must comply with the provisions of this chapter, may be constructed  
3261 in or across Resource Protection Areas if each of the following conditions is met:

3262 (1) The local government makes a finding that there are no reasonable alternatives to  
3263 aligning the road or driveway in or across the Resource Protection Area;

3264 (2) The alignment and design of the road or driveway are optimized, consistent with  
3265 other applicable requirements, to minimize (i) encroachment in the Resource  
3266 Protection Area and (ii) adverse effects on water quality;

3267 (3) The design and construction of the road or driveway satisfy all applicable criteria  
3268 of this chapter, including submission of a water quality impact assessment; and

3269 (4) The local government reviews the plan for the road or driveway proposed in or  
3270 across the Resource Protection Area in coordination with local government site plan,  
3271 subdivision and plan of development approvals.

3272 e. Flood control and stormwater management facilities that drain or treat water from  
3273 multiple development projects or from a significant portion of a watershed may be  
3274 allowed in Resource Protection Areas provided such facilities are allowed and  
3275 constructed in accordance with the Virginia Erosion and Stormwater Management Act  
3276 and its attendant regulations, and provided that (i) the local government has  
3277 conclusively established that location of the facility within the Resource Protection  
3278 Area is the optimum location; (ii) the size of the facility is the minimum necessary to  
3279 provide necessary flood control or stormwater treatment, or both; (iii) the facility must  
3280 be consistent with a comprehensive stormwater management plan developed and  
3281 approved in accordance with ~~9VAC25-870-92~~ 9VAC25-875-660 of the Virginia Erosion  
3282 and Stormwater Management Program (VSMP) regulations Regulation; (iv) all  
3283 applicable permits for construction in state or federal waters must be obtained from  
3284 the appropriate state and federal agencies, such as the U.S. Army Corps of Engineers,  
3285 the department, and the Virginia Marine Resources Commission; (v) approval must be  
3286 received from the local government prior to construction; and (vi) routine maintenance  
3287 is allowed to be performed on such facilities to assure that they continue to function  
3288 as designed. It is not the intent of this subdivision to allow a best management practice  
3289 that collects and treats runoff from only an individual lot or some portion of the lot to  
3290 be located within a Resource Protection Area.

3291 2. Exemptions in Resource Protection Areas. The following land disturbances in Resource  
3292 Protection Areas may be exempt from the criteria of this part provided that they comply  
3293 with subdivisions a and b of this subdivision 2: (i) water wells; (ii) passive recreation  
3294 facilities such as boardwalks, trails, and pathways; and (iii) historic preservation and  
3295 archaeological activities:

3296 a. Local governments shall establish administrative procedures to review such  
3297 exemptions.

3298 b. Any land disturbance exceeding an area of 2,500 square feet shall comply with the  
3299 erosion and sediment control criteria in subdivision 5 of 9VAC25-830-130.

3300 3. Buffer area requirements. The 100-foot wide buffer area shall be the landward  
3301 component of the Resource Protection Area as set forth in subdivision B 5 of 9VAC25-

3302 830-80. Notwithstanding permitted uses, encroachments, and vegetation clearing, as set  
3303 forth in this section, the 100-foot wide buffer area is not reduced in width. To minimize the  
3304 adverse effects of human activities on the other components of the Resource Protection  
3305 Area, state waters, and aquatic life, a 100-foot wide buffer area of vegetation that is  
3306 effective in retarding runoff, preventing erosion, and filtering nonpoint source pollution from  
3307 runoff shall be retained if present and established where it does not exist. Where such  
3308 buffer must be established, the planting of trees shall be incorporated as appropriate to  
3309 site conditions and in such a manner to maximize the buffer function. Inclusion of native  
3310 species in tree planting is preferred.

3311 a. The 100-foot wide buffer area shall be deemed to achieve a 75% reduction of  
3312 sediments and a 40% reduction of nutrients.

3313 b. Where land uses such as agriculture or silviculture within the area of the buffer  
3314 cease and the lands are proposed to be converted to other uses, the full 100-foot wide  
3315 buffer shall be reestablished. In reestablishing the buffer, management measures shall  
3316 be undertaken to provide woody vegetation that assures the buffer functions set forth  
3317 in this chapter. Where such buffer must be reestablished, the planting of trees shall be  
3318 incorporated as appropriate to site conditions and in such a manner to maximize the  
3319 buffer function. Inclusion of native species in tree planting is preferred.

3320 4. Permitted encroachments into the buffer area.

3321 a. When the application of the buffer area would result in the loss of a buildable area  
3322 on a lot or parcel recorded prior to October 1, 1989, encroachments into the buffer  
3323 area may be allowed through an administrative process in accordance with the  
3324 following criteria:

3325 (1) Encroachments into the buffer area shall be the minimum necessary to achieve a  
3326 reasonable buildable area for a principal structure and necessary utilities.

3327 (2) Where practicable, a vegetated area that will maximize water quality protection,  
3328 mitigate the effects of the buffer encroachment, and is equal to the area of  
3329 encroachment into the buffer area shall be established elsewhere on the lot or parcel.  
3330 Such vegetated area where established shall include the planting of trees as  
3331 appropriate to site conditions. Inclusion of native species in tree planting is preferred.

3332 (3) The encroachment may not extend into the seaward 50 feet of the buffer area.

3333 b. When the application of the buffer area would result in the loss of a buildable area  
3334 on a lot or parcel recorded between October 1, 1989, and March 1, 2002,  
3335 encroachments into the buffer area may be allowed through an administrative process  
3336 in accordance with the following criteria:

3337 (1) The lot or parcel was created as a result of a legal process conducted in conformity  
3338 with the local government's subdivision regulations;

3339 (2) Conditions or mitigation measures imposed through a previously approved  
3340 exception shall be met;

3341 (3) If the use of a best management practice (BMP) was previously required, the BMP  
3342 shall be evaluated to determine if it continues to function effectively and, if necessary,  
3343 the BMP shall be reestablished or repaired and maintained as required; and

3344 (4) The criteria in subdivision 4 a of this section shall be met.

3345 5. Permitted modifications of the buffer area.

3346 a. In order to maintain the functional value of the buffer area, existing vegetation may  
3347 be removed, subject to approval by the local government, only to provide for  
3348 reasonable sight lines, access paths, general woodlot management, and best

3349 management practices, including those that prevent upland erosion and concentrated  
3350 flows of stormwater, as follows:

3351 (1) Trees may be pruned or removed as necessary to provide for sight lines and vistas,  
3352 provided that where removed, they shall be replaced with other vegetation that is  
3353 equally effective in retarding runoff, preventing erosion, and filtering nonpoint source  
3354 pollution from runoff. Mature trees shall be preserved and trimmed or pruned in lieu of  
3355 removal as site conditions permit and any removal should be limited to the fewest  
3356 number of trees feasible. When trees are removed to provide for sight lines and vista,  
3357 they shall be replaced with trees as appropriate to site conditions and in such a manner  
3358 as to maximize the buffer function and to protect the quality of state waters. Inclusion  
3359 of native species in tree replanting is preferred.

3360 (2) Any path shall be constructed and surfaced so as to effectively control erosion.

3361 (3) Dead, diseased, or dying trees or shrubbery and noxious weeds (such as Johnson  
3362 grass, kudzu, and multiflora rose) may be removed and thinning of trees may be  
3363 allowed pursuant to sound horticultural practice incorporated into locally-adopted  
3364 standards.

3365 (4) For shoreline erosion control projects, trees and woody vegetation may be  
3366 removed, necessary control techniques employed, and appropriate vegetation  
3367 established to protect or stabilize the shoreline in accordance with the best available  
3368 technical advice and applicable permit conditions or requirements. Mature trees shall  
3369 be removed only as necessary for the installation and maintenance of the projects  
3370 consistent with the best available technical advice project plans, and applicable permit  
3371 conditions or requirements. Trees shall be utilized in the project when vegetation is  
3372 being established as appropriate to the site conditions and the project specifications.  
3373 Inclusion of native species in tree planting is preferred.

3374 b. On agricultural lands the agricultural buffer area shall be managed to prevent  
3375 concentrated flows of surface water from breaching the buffer area and appropriate  
3376 measures may be taken to prevent noxious weeds (such as Johnson grass, kudzu,  
3377 and multiflora rose) from invading the buffer area. Agricultural activities may encroach  
3378 into the buffer area as follows:

3379 (1) Agricultural activities may encroach into the landward 50 feet of the 100-foot wide  
3380 buffer area when at least one agricultural best management practice which, in the  
3381 opinion of the local soil and water conservation district board, addresses the more  
3382 predominant water quality issue on the adjacent land—erosion control or nutrient  
3383 management—is being implemented on the adjacent land, provided that the  
3384 combination of the undisturbed buffer area and the best management practice  
3385 achieves water quality protection, pollutant removal, and water resource conservation  
3386 at least the equivalent of the 100-foot wide buffer area. If nutrient management is  
3387 identified as the predominant water quality issue, a nutrient management plan,  
3388 including soil tests, must be developed consistent with the Nutrient Management  
3389 Training and Certification Regulations (4VAC50-85) administered by the Virginia Soil  
3390 and Water Conservation Board.

3391 (2) Agricultural activities may encroach within the landward 75 feet of the 100-foot wide  
3392 buffer area when agricultural best management practices which address erosion  
3393 control, nutrient management, and pest chemical control, are being implemented on  
3394 the adjacent land. The erosion control practices must prevent erosion from exceeding  
3395 the soil loss tolerance level, referred to as "T," as defined in the "National Soil Survey  
3396 Handbook" of November 1996 in the "Field Office Technical Guide" of the U.S.  
3397 Department of Agriculture Natural Resource Conservation Service. A nutrient

3398 management plan, including soil tests, must be developed, consistent with the Nutrient  
3399 Management Training and Certification Regulations (4VAC50-85) administered by the  
3400 Virginia Soil and Water Conservation Board. In conjunction with the remaining buffer  
3401 area, this collection of best management practices shall be presumed to achieve water  
3402 quality protection at least the equivalent of that provided by the 100-foot wide buffer  
3403 area.

3404 (3) The buffer area is not required to be designated adjacent to agricultural drainage  
3405 ditches if at least one best management practice which, in the opinion of the local soil  
3406 and water conservation district board, addresses the more predominant water quality  
3407 issue on the adjacent land—either erosion control or nutrient management—is being  
3408 implemented on the adjacent land.

3409 (4) If specific problems are identified pertaining to agricultural activities that are  
3410 causing pollution of the nearby water body with perennial flow or violate performance  
3411 standards pertaining to the vegetated buffer area, the local government, in cooperation  
3412 with soil and water conservation district, shall recommend a compliance schedule to  
3413 the landowner and require the problems to be corrected consistent with that schedule.  
3414 This schedule shall expedite environmental protection while taking into account the  
3415 seasons and other temporal considerations so that the probability for successfully  
3416 implementing the corrective measures is greatest.

3417 (5) In cases where the landowner or the landowner's agent or operator has refused  
3418 assistance from the local soil and water conservation district in complying with or  
3419 documenting compliance with the agricultural requirements of this chapter, the district  
3420 shall report the noncompliance to the local government. The local government shall  
3421 require the landowner to correct the problems within a specified period of time not to  
3422 exceed 18 months from their initial notification of the deficiencies to the landowner.  
3423 The local government, in cooperation with the district, shall recommend a compliance  
3424 schedule to the landowner. This schedule shall expedite environmental protection  
3425 while taking into account the seasons and other temporal considerations so that the  
3426 probability for successfully implementing the corrective measures is greatest.

3427 6. Water quality impact assessment. A water quality impact assessment shall be required  
3428 for any proposed development within the Resource Protection Area consistent with this  
3429 part and for any other development in Chesapeake Bay Preservation Areas that may  
3430 warrant such assessment because of the unique characteristics of the site or intensity of  
3431 the proposed use or development.

3432 a. The purpose of the water quality impact assessment is to identify the impacts of  
3433 proposed development on water quality and lands in the Resource Protection Areas  
3434 consistent with the goals and objectives of the Act, this chapter, and local programs,  
3435 and to determine specific measures for mitigation of those impacts. The specific  
3436 content and procedures for the water quality impact assessment shall be established  
3437 by each local government. Local governments should notify the department of all  
3438 development requiring such an assessment.

3439 b. The water quality impact assessment shall be of sufficient specificity to demonstrate  
3440 compliance with the criteria of the local program.

3441 7. Buffer area requirements for Intensely Developed Areas. In Intensely Developed Areas  
3442 the local government may exercise discretion regarding whether to require establishment  
3443 of vegetation in the 100-foot wide buffer area. However, while the immediate  
3444 establishment of vegetation in the buffer area may be impractical, local governments shall  
3445 give consideration to implementing measures that would establish vegetation in the buffer  
3446 in these areas over time in order to maximize water quality protection, pollutant removal,

3447 and water resource conservation. In considering such measures, local governments shall  
3448 consider the planting of trees as a component of any such measure. Inclusion of native  
3449 species in tree planting is preferred.

3450 **9VAC25-830-150. Nonconformities, exemptions, and exceptions.**

3451 A. Nonconforming uses and noncomplying structures.

3452 1. Local governments may permit the continued use, but not necessarily the expansion,  
3453 of any structure in existence on the date of local program adoption. Local governments  
3454 may establish an administrative review procedure to waive or modify the criteria of this  
3455 part for structures on legal nonconforming lots or parcels provided that:

3456 a. There will be no net increase in nonpoint source pollutant load; and

3457 b. Any development or land disturbance exceeding an area of 2,500 square feet  
3458 complies with all erosion and sediment control requirements of this part.

3459 2. This chapter shall not be construed to prevent the reconstruction of pre-existing  
3460 structures within Chesapeake Bay Preservation Areas from occurring as a result of  
3461 casualty loss unless otherwise restricted by local government ordinances.

3462 B. Public utilities, railroads, public roads, and facilities exemptions.

3463 1. Construction, installation, operation, and maintenance of electric, natural gas, fiber-  
3464 optic, and telephone transmission lines, railroads, and public roads and their appurtenant  
3465 structures in accordance with (i) regulations promulgated pursuant to the ~~Erosion and~~  
3466 ~~Sediment Control Law and the Virginia~~ Erosion and Stormwater Management Act, (ii) an  
3467 erosion and sediment control plan and a stormwater management plan approved by the  
3468 department, or (iii) local water quality protection criteria at least as stringent as the above  
3469 state requirements will be deemed to constitute compliance with this chapter. The  
3470 exemption of public roads is further conditioned on the following:

3471 a. Optimization of the road alignment and design, consistent with other applicable  
3472 requirements, to prevent or otherwise minimize (i) encroachment in the Resource  
3473 Protection Area and (ii) adverse effects on water quality; and

3474 b. Local governments may choose to exempt (i) all public roads as defined in 9VAC25-  
3475 830-40, or (ii) only those public roads constructed by the Virginia Department of  
3476 Transportation.

3477 2. Construction, installation and maintenance of water, sewer, natural gas, and  
3478 underground telecommunications and cable television lines owned, permitted, or both, by  
3479 a local government or regional service authority shall be exempt from the criteria in this  
3480 part provided that:

3481 a. To the degree possible, the location of such utilities and facilities should be outside  
3482 Resource Protection Areas;

3483 b. No more land shall be disturbed than is necessary to provide for the proposed utility  
3484 installation;

3485 c. All such construction, installation and maintenance of such utilities and facilities shall  
3486 be in compliance with all applicable state and federal permits and designed and  
3487 conducted in a manner that protects water quality; and

3488 d. Any land disturbance exceeding an area of 2,500 square feet complies with all  
3489 erosion and sediment control requirements of this part.

3490 C. Exceptions.

3491 1. Exceptions to the requirements of 9VAC25-830-130 and 9VAC25-830-140 may be  
3492 granted, provided that a finding is made that:

- 3493 a. The requested exception to the criteria is the minimum necessary to afford relief;
- 3494 b. Granting the exception will not confer upon the applicant any special privileges that
- 3495 are denied by this part to other property owners who are subject to its provisions and
- 3496 who are similarly situated;
- 3497 c. The exception is in harmony with the purpose and intent of this part and is not of
- 3498 substantial detriment to water quality;
- 3499 d. The exception request is not based upon conditions or circumstances that are self-
- 3500 created or self-imposed;
- 3501 e. Reasonable and appropriate conditions are imposed, as warranted, that will prevent
- 3502 the allowed activity from causing a degradation of water quality; and
- 3503 f. Other findings, as appropriate and required by the local government, are met.
- 3504 2. Each local government shall design and implement an appropriate process or
- 3505 processes for the administration of exceptions. The process to be used for exceptions to
- 3506 9VAC25-830-140 shall include, but not be limited to, the following provisions:
- 3507 a. An exception may be considered and acted upon only by the local legislative body;
- 3508 the local planning commission; or a special committee, board or commission
- 3509 established or designated by the local government to implement the provisions of the
- 3510 Act and this chapter.
- 3511 b. Local governments implementing this chapter through the local zoning code may
- 3512 provide for specific provisions that allow for consideration of exceptions that comply
- 3513 with subdivision 2 of this subsection.
- 3514 c. The provision of subdivision 2 b of this subsection notwithstanding, no exception
- 3515 shall be authorized except after notice and a hearing, as required by § 15.2-2204 of
- 3516 the Code of Virginia, except that only one hearing shall be required. However, when
- 3517 giving any required notice to the owners, their agents or the occupants of abutting
- 3518 property and property immediately across the street or road from the property affected,
- 3519 the notice may be given by first-class mail rather than by registered or certified mail.
- 3520 3. Exceptions to other provisions of this part may be granted, provided that:
- 3521 a. Exceptions to the criteria shall be the minimum necessary to afford relief; and
- 3522 b. Reasonable and appropriate conditions upon any exception granted shall be
- 3523 imposed, as necessary, so that the purpose and intent of the Act is preserved.
- 3524 4. Notwithstanding the provisions of subdivisions 2 a through 2 c of this subsection,
- 3525 additions and modifications to existing legal principal structures may be processed through
- 3526 an administrative review process, as allowed by subsection A of this section, subject to
- 3527 the findings required by subdivision 1 of this subsection but without a requirement for a
- 3528 public hearing. This provision shall not apply to accessory structures.

3529 **9VAC25-890-1. Definitions.**

3530 The words and terms used in this chapter shall have the meanings defined in the Virginia

3531 Erosion and Stormwater Management Act (Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of

3532 Title 62.1 of the Code of Virginia) and the Virginia Erosion and Stormwater Management Program

3533 (VSMP) Regulation (~~9VAC25-870~~) (9VAC25-875) unless the context clearly indicates otherwise,

3534 except that for the purposes of this chapter:

3535 "Annual practice" means a nonstructural best management practice such as street or storm

3536 drain cleaning that reduces pollution for one compliance year upon implementation.

3537 "Board" means the State Water Control Board. When used outside the context of the

3538 promulgation of regulations, including regulations to establish general permits, "board" means the

3539 Department of Environmental Quality.

3540 "Date brought online" means the date when the permittee determines that a new stormwater  
3541 management facility is properly functioning.

3542 "Department" or "DEQ" means the Department of Environmental Quality.

3543 "Ecosystem restoration projects" means practices implemented to reestablish and maintain  
3544 natural systems that prevent, reduce, or remediate pollutant loadings. Examples of ecosystem  
3545 restoration projects include stream restoration, shoreline restoration, land-use conversion, and  
3546 reforestation.

3547 "High-priority facilities" means facilities owned or operated by the permittee with drainage to  
3548 any permitted MS4 that actively engage in one or more of the following activities: (i) composting;  
3549 (ii) equipment storage, cleaning, and maintenance; (iii) long-term bulk materials storage; (iv)  
3550 pesticide, herbicide, and fertilizer storage; (v) recycling; (vi) anti-icing and deicing agent storage,  
3551 handling, and transfer; (vii) solid waste handling and transfer, and (viii) permittee owned or  
3552 operated vehicle washing, maintenance, and salvage.

3553 "MS4 regulated service area" or "service area" means for Phase II permittees, the drainage  
3554 area served by the permittee's MS4 that is located within the 2020 census urban areas with a  
3555 population of at least 50,000 or the 2000 and 2010 decennial censuses urbanized area as  
3556 determined by the Bureau of the Census. MS4 regulated service area may also be referred to as  
3557 "served by the MS4" as it pertains to the tables in Part II A of this permit.

3558 "Nontraditional MS4 permittee" or "nontraditional permittee" means a government entity that  
3559 operates a regulated MS4 that is not under the authority of a county board of supervisors, a city  
3560 council, or a town council.

3561 "Physically interconnected" means that one MS4 is connected to a second MS4 in such a  
3562 manner that it allows for direct discharges to the second system.

3563 "Pollutants of concern" or "POC" means pollutants specifically identified in a U.S.  
3564 Environmental Protection Agency approved total maximum daily load (TMDL) report as causing  
3565 a water quality impairment.

3566 "Traditional MS4 permittee" or "traditional permittee" means a local government that operates  
3567 a regulated MS4 under the authority of a county board of supervisors, a city council, or a town  
3568 council.

3569 **9VAC25-890-20. Authorization to discharge.**

3570 A. Any operator covered by this general permit is authorized to discharge stormwater from the  
3571 MS4 to surface waters of the Commonwealth of Virginia provided that:

3572 1. The operator submits a complete and accurate registration statement in accordance  
3573 with 9VAC25-890-30 and that registration statement is accepted by the department;

3574 2. The operator submits any permit fees required by Part XIII VIII (9VAC25-870-700  
3575 9VAC25-875-1290 et seq.);

3576 3. The operator complies with the requirements of 9VAC25-890-40; and

3577 4. The department has not notified the operator that the discharge is ineligible for coverage  
3578 in accordance with subsection C of this section.

3579 B. The operator is not authorized by this general permit to discharge to surface waters  
3580 specifically named in other board regulations that prohibit such discharges.

3581 C. The department will notify an operator that the discharge is not eligible for coverage under  
3582 this general permit in the event of any of the following:

3583 1. The operator is required to obtain an individual permit in accordance with ~~9VAC25-870-~~  
3584 ~~440-B~~ 9VAC25-875-980 B;

- 3585 2. The operator is proposing discharges to surface waters specifically named in other  
3586 board regulations that prohibit such discharges; or
- 3587 3. The operator fails to implement BMPs to reduce pollutants to the maximum extent  
3588 practicable (MEP) standard to demonstrate progress toward meeting the water quality  
3589 requirements as listed in 9VAC25-31-220 D 1 a in accordance with 9VAC25-31-220 K 2.
- 3590 D. Nonstormwater discharges or flows into the MS4 are authorized by this state permit and  
3591 do not need to be addressed in the MS4 program required under 9VAC25-890-40 Part I E 3 if:
- 3592 1. The nonstormwater discharges or flows are covered by a separate individual or general  
3593 VPDES or state permit for nonstormwater discharges;
- 3594 2. The individual nonstormwater discharges or flows have been identified by the  
3595 department as de minimis discharges that are not significant sources of pollutants to  
3596 surface waters and do not require a separate VPDES permit;
- 3597 3. The nonstormwater discharges or flows are identified in this subdivision and have not  
3598 been identified by the operator or by the department as significant contributors of  
3599 pollutants to the MS4:
- 3600 a. Water line flushing, managed in a manner to avoid an instream impact;
- 3601 b. Landscape irrigation;
- 3602 c. Diverted stream flows;
- 3603 d. Rising groundwaters;
- 3604 e. Uncontaminated groundwater infiltration, as defined at 40 CFR 35.2005(20);
- 3605 f. Uncontaminated pumped groundwater;
- 3606 g. Discharges from potable water sources managed in a manner to avoid instream  
3607 impact;
- 3608 h. Foundation drains;
- 3609 i. Air conditioning condensation;
- 3610 j. Irrigation water;
- 3611 k. Springs;
- 3612 l. Water from crawl space pumps;
- 3613 m. Footing drains;
- 3614 n. Lawn watering;
- 3615 o. Individual residential car washing;
- 3616 p. Flows from riparian habitats and wetlands;
- 3617 q. Dechlorinated freshwater swimming pool discharges managed in a manner to avoid  
3618 instream impact;
- 3619 r. Street and pavement wash waters that do not contain cleaning additives or are  
3620 otherwise managed in a manner to avoid instream impact;
- 3621 s. Routine external building washdown provided no soaps, solvents, or detergents are  
3622 used, external building surfaces do not contain hazardous substances, and the wash  
3623 water is filtered, settled, or similarly treated prior to discharge;
- 3624 t. Discharges or flows from emergency firefighting activities;
- 3625 u. Discharges or flows of water for fire prevention or firefighting training activities  
3626 managed in a manner to avoid instream impact in accordance with § 9.1-207.1 of the  
3627 Code of Virginia;

3628 v. Discharges from noncommercial fundraising car washes if the washing uses only  
3629 biodegradable, phosphate-free, water-based cleaners in accordance with § 15.2-  
3630 2114.1 of the Code of Virginia; or

3631 w. Other activities generating discharges identified by the department as not requiring  
3632 VPDES authorization; or

3633 4. The immediate discharge of materials is necessary to protect life or property as  
3634 determined by fire department personnel or emergency management officials or any  
3635 discharge in accordance with 9VAC25-31-40. The operator shall take or ensure that the  
3636 responsible party takes all reasonable steps to minimize or prevent any adverse effect on  
3637 human health or the environment. This state permit does not transfer liability for a spill  
3638 itself from the party responsible for the spill to the operator nor relieve the party responsible  
3639 for a spill from the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302.

3640 E. In the event the operator is unable to meet certain conditions of this permit due to  
3641 circumstances beyond the operator's control, the operator shall submit a written explanation of  
3642 the circumstances that prevented state permit compliance to the department in the annual report.  
3643 Circumstances beyond the control of the operator include abnormal climatic conditions; weather  
3644 conditions that make certain requirements unsafe or impracticable; or unavoidable equipment  
3645 failures caused by weather conditions or other conditions beyond the reasonable control of the  
3646 operator (operator error is not a condition beyond the control of the operator). The failure to  
3647 provide adequate program funding, staffing, or equipment maintenance shall not be an acceptable  
3648 explanation for failure to meet state permit conditions. The department will determine, at its sole  
3649 discretion, whether the reported information will result in an enforcement action.

3650 F. Discharges that are excluded from permitting requirements pursuant to ~~9VAC25-870-300~~  
3651 9VAC25-875-860 are exempted from the regulatory requirements of this state permit.

3652 G. For those portions of the MS4 engaging in activities that are covered under a separate  
3653 VPDES permit for discharges associated with industrial activities, the permittee shall follow the  
3654 conditions established by the separate VPDES permit.

3655 H. Upon termination of permit coverage for those activities addressed in subsection G of this  
3656 section, the discharges from the outfalls previously authorized under the VPDES permit for  
3657 stormwater discharges associated with industrial activities shall meet the conditions of this state  
3658 permit provided it has been determined by the department that an individual MS4 permit is not  
3659 required.

3660 I. Stormwater discharges from specific MS4 permittee activities that have been granted  
3661 conditional exclusion for "no exposure" of industrial activities and materials to stormwater under  
3662 the separate VPDES permitting program shall comply with this state permit unless a separate  
3663 VPDES permit is obtained. The department is responsible for determining compliance with the  
3664 conditional exclusion under the State Water Control Law (Chapter 3.1 (§ 62.1-44.2 et seq.) of Title  
3665 62.1 of the Code of Virginia) and attendant regulations.

3666 J. Receipt of this general permit does not relieve any permittee of the responsibility to comply  
3667 with any other applicable federal, state, or local statute, ordinance, or regulation.

3668 K. Continuation of permit coverage.

3669 1. Any permittee that was authorized to discharge under the state permit effective  
3670 November 1, 2018, and that submits a complete registration statement on or before  
3671 October 1, 2023, is authorized to continue to discharge under the terms of the November  
3672 1, 2018, state permit until such time as the department either:

3673 a. Issues coverage to the permittee under this state permit; or

3674 b. Notifies the permittee that the discharge is not eligible for coverage under this state  
3675 permit.

- 3676 2. When the permittee is not in compliance with the conditions of the expiring or expired  
3677 general permit, the department may choose to do any or all of the following:
- 3678 a. Initiate enforcement action based upon the 2018 general permit;
  - 3679 b. Issue a notice of intent to deny coverage under the new general permit. If coverage  
3680 under the general permit is denied, the permittee would then be required to cease the  
3681 activities authorized by the continued general permit or be subject to enforcement  
3682 action for operating without a state permit;
  - 3683 c. Issue a new state permit with appropriate conditions; or
  - 3684 d. Take other actions authorized by the State Water Control Law, VPDES (9VAC25-  
3685 31), and ~~VSMP (9VAC25-870)~~ Virginia Erosion and Stormwater Management  
3686 (9VAC25-875) regulations.

3687 **9VAC25-890-30. Registration statement.**

- 3688 A. Deadline for submitting a registration statement.
- 3689 1. Operators of MS4s described under ~~9VAC25-870-400 B~~ 9VAC25-875-970 B that are  
3690 applying for initial coverage under this general permit must submit a complete registration  
3691 statement to the department within 180 days of notice of designation, unless the  
3692 department grants a later date.
  - 3693 2. In order to continue uninterrupted coverage under the general permit, operators of  
3694 MS4s shall submit a new registration statement no later than October 1, 2023, unless  
3695 permission for a later date has been granted by the department. The board shall not grant  
3696 permission for registration statements to be submitted later than the expiration date of the  
3697 existing state permit.
- 3698 B. The registration statement shall include the following information:
- 3699 1. The name and location of the MS4;
  - 3700 2. The name of the owner or operator of the MS4;
  - 3701 3. The mailing address of the owner or operator of the MS4;
  - 3702 4. The type of MS4 (e.g., city, county, incorporated town, unincorporated town, college or  
3703 university, local school board, military installation, transportation system, federal or state  
3704 facility, or other);
  - 3705 5. If the MS4 is operated under the authority of a city council or a county board of  
3706 supervisors, indicate if public school facilities are included in the application.
  - 3707 6. The name, title, mailing address, telephone number, and email address for the following  
3708 individuals:
    - 3709 a. The responsible official who meets the criteria established in ~~9VAC25-870-370 A 3~~  
3710 9VAC25-875-940 A 3;
    - 3711 b. The MS4 permit contact; and
    - 3712 c. The annual permit maintenance fee contact;
  - 3713 7. The following receiving waters information:
    - 3714 a. The names of the receiving surface waters to which the MS4 system discharges;  
3715 and
    - 3716 b. Whether or not the receiving waters are listed as impaired in the Virginia 2022  
3717 305(b)/303(d) Water Quality Assessment Integrated Report;
  - 3718 8. The names of any physically interconnected MS4s to which the MS4 discharges;

3719 9. A list of all existing signed agreements between the operator and any applicable third  
3720 parties where the operator has entered into an agreement in order to implement minimum  
3721 control measures or portions of minimum control measures;

3722 10. For permittees previously covered under the General VPDES Permit for Discharges  
3723 of Stormwater from MS4 effective November 1, 2018, whose regulated MS4 is located  
3724 partially or entirely in the Chesapeake Bay watershed, a draft third phase Chesapeake  
3725 Bay TMDL action plan; and

3726 11. The following certification: "I certify under penalty of law that this document and all  
3727 attachments were prepared under my direction or supervision in accordance with a system  
3728 designed to assure that qualified personnel properly gather and evaluate the information  
3729 submitted. Based on my inquiry of the person or persons who manage the system, or  
3730 those persons directly responsible for gathering the information, the information submitted  
3731 is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that  
3732 there are significant penalties for submitting false information, including the possibility of  
3733 fine and imprisonment for knowing violations."

3734 C. The registration statement shall be signed in accordance with 9VAC25-890-40 Part IV K 4.

3735 D. An operator may file its own registration statement, or the operator and other operators of  
3736 MS4s may jointly submit a registration statement. If responsibilities for meeting the stormwater  
3737 minimum control measures will be shared with other municipalities or governmental entities, the  
3738 registration statement must describe which stormwater minimum control measures the operator  
3739 will implement and identify the entities that will implement the other stormwater minimum control  
3740 measures within the area served by the MS4.

3741 E. The registration statement may be delivered to the DEQ Central Office, Office of VPDES  
3742 Permits or by electronic mail to an electronic mailbox specified by the department. Following  
3743 notification from the department of the start date for the required electronic submission of Notices  
3744 of Intent to discharge forms (i.e., registration statements) as provided for in 9VAC25-31-1020,  
3745 such forms submitted after that date shall be electronically submitted to the department in  
3746 compliance with this section and 9VAC25-31-1020. There shall be at least three months of notice  
3747 provided between the notification from the department and the date after which such forms must  
3748 be submitted electronically.

3749 **9VAC25-890-40. General permit.**

3750 Any MS4 operator whose registration statement is accepted by the department will receive  
3751 coverage under the following general permit and shall comply with the requirements in this  
3752 general permit and be subject to all applicable requirements of the Virginia Erosion and  
3753 Stormwater Management Program (VSMP) Regulations (9VAC25-870) Management Regulation  
3754 (9VAC25-875) and the Virginia Pollutant Discharge Elimination System (VPDES) Permit  
3755 Regulations (9VAC25-31).

3756 General Permit No.: VAR04

3757 Effective Date: November 1, 2023

3758 Expiration Date: October 31, 2028

3759 GENERAL VPDES PERMIT FOR DISCHARGES OF STORMWATER FROM SMALL  
3760 MUNICIPAL SEPARATE STORM SEWER SYSTEMS

**3761** AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA STORMWATER MANAGEMENT  
**3762** PROGRAM REGULATIONS, VIRGINIA POLLUTANT DISCHARGE ELIMINATION SYSTEM  
**3763** REGULATIONS, AND THE VIRGINIA STATE WATER CONTROL LAW

**3764** In compliance with the provisions of the Clean Water Act, as amended and pursuant to the  
**3765** State Water Control Law and regulations adopted pursuant thereto, permittees of small municipal  
**3766** separate storm sewer systems are authorized to discharge to surface waters within the  
**3767** boundaries of the Commonwealth of Virginia, except those waters specifically named in State  
**3768** Water Control Board regulations that prohibit such discharges.

**3769** The authorized discharge shall be in accordance with the registration statement filed with the  
**3770** department, this cover page, Part I - Discharge Authorization and Special Conditions, Part II -  
**3771** TMDL Special Conditions, Part III - DEQ BMP Warehouse Reporting, and Part IV - Conditions  
**3772** Applicable to All State and VPDES Permits, as set forth in this general permit.

**3773** Part I

**3774** Discharge Authorization and Special Conditions

**3775** A. Coverage under this state permit. During the period beginning with the date of coverage  
**3776** under this general permit and lasting until the expiration and reissuance of this state permit, the  
**3777** permittee is authorized to discharge stormwater and those authorized nonstormwater discharges  
**3778** described in 9VAC25-890-20 D in accordance with this state permit from the small municipal  
**3779** separate storm sewer system identified in the registration statement into surface waters within the  
**3780** boundaries of the Commonwealth of Virginia and consistent with 9VAC25-890-30.

**3781** B. The permittee shall develop, implement, and enforce an MS4 program designed to reduce  
**3782** the discharge of pollutants from the MS4 to the MEP in accordance with this permit, to protect  
**3783** water quality, and to satisfy the appropriate water quality requirements of the State Water Control  
**3784** Law and its attendant regulations. The permittee shall utilize the legal authority provided by the  
**3785** laws and regulations of the Commonwealth of Virginia to control discharges to and from the MS4.  
**3786** This legal authority may be a combination of statute, ordinance, permit, policy, specific contract  
**3787** language, order, or interjurisdictional agreements. The MS4 program shall include the minimum  
**3788** control measures (MCM) described in Part I E. For the purposes of this permit term,  
**3789** implementation of MCMs in Part I E and the Chesapeake Bay and local TMDL requirements in  
**3790** Part II (as applicable) consistent with the provisions of an iterative MS4 program required pursuant  
**3791** to this general permit constitutes compliance with the standard of reducing pollutants to the MEP,  
**3792** provides adequate progress in meeting water quality standards, and satisfies the appropriate  
**3793** water quality requirements of the State Water Control Law and its attendant regulations.

**3794** C. The MS4 program plan.

- 3795** 1. The MS4 program plan shall include, at a minimum, the following written items:
- 3796** a. The roles and responsibilities of each of the permittee's divisions and departments  
**3797** in the implementation of the requirements of the permit tasked with ensuring that the  
**3798** permit requirements are met;
- 3799** b. If the permittee utilizes another entity to implement portions of the MS4 program, a  
**3800** copy of the written agreement. The description of each party's roles and  
**3801** responsibilities, including any written agreements with third parties, shall be updated  
**3802** as necessary;
- 3803** c. For each MCM in Part I E, the following information shall be included:
- 3804** (1) Each specific requirement as listed in Part I E for each MCM;

- 3805 (2) A description of the BMPs or strategies that the permittee anticipates will be  
3806 implemented to demonstrate compliance with the permit conditions in Part I E;
- 3807 (3) All standard operating procedures or policies necessary to implement the BMPs;  
3808 (4) The measurable goal by which each BMP or strategy will be evaluated; and  
3809 (5) The persons, positions, or departments responsible for implementing each BMP or  
3810 strategy; and
- 3811 d. A list of documents incorporated by reference, including the version and date of the  
3812 document being incorporated.
- 3813 2. If the permittee is receiving initial coverage under this general VPDES permit for the  
3814 discharge of stormwater, the permittee shall:
- 3815 a. No later than six months following the date of permit coverage, submit to the  
3816 department a schedule for the development of each component of the MS4 program  
3817 plan in accordance with Part I C 1 that does not exceed October 31, 2028, unless the  
3818 department grants a later date; and
- 3819 b. Provide to the department a copy of the MS4 program plan upon completion of  
3820 development.
- 3821 3. If the permittee was previously covered under the General VPDES Permit for  
3822 Discharges of Stormwater from MS4 effective November 1, 2018, the permittee shall  
3823 update the MS4 program plan to meet the requirements of this permit no later than six  
3824 months after the effective date of this permit unless otherwise specified in another permit  
3825 condition and shall post the most up-to-date version of MS4 program plan on the  
3826 permittee's website or location where the MS4 program plan can be obtained as required  
3827 by Part I E 2 within 30 days of updating the MS4 program plan. Until such time that the  
3828 MS4 program plan is updated in accordance with Part I E, the permittee shall continue to  
3829 implement the MS4 program plan in effect at the time that coverage is issued under this  
3830 general permit.
- 3831 4. Revisions to the MS4 program plan are expected throughout the life of this permit as  
3832 part of the iterative process to reduce pollutant loading and protect water quality to the  
3833 MEP. As such, revisions made in accordance with this permit as a result of the iterative  
3834 process do not require modification of this permit. The permittee shall summarize revisions  
3835 to the MS4 program plan as part of the annual report as described in Part I D 3.
- 3836 5. The permittee may demonstrate compliance with one or more MCM in Part I E through  
3837 implementation of separate statutory or regulatory programs provided that the permittee's  
3838 MS4 program plan identifies and fully describes any program that will be used to satisfy  
3839 one or more of the minimum control measures of Part I E. If the program that the permittee  
3840 is using requires the approval of a third party, the program shall be fully approved by the  
3841 third party, or the permittee shall be working toward getting full approval. Documentation  
3842 of the program's approval status or the progress toward achieving full approval shall be  
3843 included in the annual report required by Part I D. The permittee shall remain responsible  
3844 for compliance with the permit requirements if the other entity fails to implement one or  
3845 more components of the control measures.
- 3846 6. The permittee may rely on another entity to satisfy the permit requirements to implement  
3847 a minimum control measure if:
- 3848 a. The other entity, in fact, implements the control measure;
- 3849 b. The particular control measure, or component thereof, is at least as stringent as the  
3850 corresponding permit requirement;

3851 c. The other entity agrees to implement the control measure on behalf of the permittee;  
3852 and

3853 d. The agreement between the parties is documented in writing and retained by the  
3854 permittee with the MS4 program plan for as long as the agreement is active.

3855 The permittee shall remain responsible for compliance with requirements of the permit  
3856 and shall document in the annual reports required in accordance with Part I D that another  
3857 entity is being relied on to satisfy all or part of the state permit requirements. The permittee  
3858 shall provide the information required in Part I D.

3859 7. If the permittee relies on another governmental entity regulated under ~~9VAC25-870-380~~  
3860 9VAC25-875-950 to satisfy all of the state permit obligations, including the obligation to  
3861 file periodic reports required by Part I D, the permittee must note that fact in the registration  
3862 statement, but is not required to file the periodic reports. The permittee remains  
3863 responsible for compliance with the state permit requirements if the other entity fails to  
3864 implement the control measures or components thereof.

3865 D. Annual reporting requirements.

3866 1. The permittee shall submit an annual report to the department no later than October 1  
3867 of each year in a method, (i.e., how the permittee must submit) and format (i.e., how the  
3868 report shall be laid out) as specified by the department; the required content of the annual  
3869 report is specified in Part I E and Part II B. The report shall cover the previous year from  
3870 July 1 to June 30.

3871 2. Following notification from the department of the start date for the required electronic  
3872 submission of annual reports, as provided for in 9VAC25-31-1020, such forms and reports  
3873 submitted after that date shall be electronically submitted to the department in compliance  
3874 with this section and 9VAC25-31-1020. There shall be at least a three-month notice  
3875 provided between the notification from the department and the date after which such forms  
3876 and reports must be submitted electronically.

3877 3. The annual report shall include the following general information:

- 3878 a. The permittee, system name, and permit number;
- 3879 b. The reporting period for which the annual report is being submitted;
- 3880 c. A signed certification as per Part IV K;
- 3881 d. Each annual reporting item as specified in an MCM in Part I E; and
- 3882 e. An evaluation of the MS4 program implementation, including a review of each MCM,  
3883 to determine the MS4 program's effectiveness and whether or not changes to the MS4  
3884 program plan are necessary.

3885 4. For permittees receiving initial coverage under this general VPDES permit for the  
3886 discharge of stormwater, the annual report shall include a status update on each  
3887 component of the MS4 program plan being developed. Once the MS4 program plan has  
3888 been updated to include implementation of a specific MCM in Part I E, the permittee shall  
3889 follow the reporting requirements established in Part I D 3.

3890 5. For those permittees with requirements established under Part II B, the annual report  
3891 shall include a status report on the implementation of the local TMDL action plans in  
3892 accordance with Part II B including any revisions to the plan.

3893 6. For the purposes of this permit, the MS4 program plan , annual reports, the Chesapeake  
3894 Bay TMDL action plan, and Chesapeake Bay TMDL implementation annual status reports  
3895 shall be maintained as separate documents and submitted to the department as required  
3896 by this permit as separate documents.

3897 E. Minimum control measures.

- 3898 1. Public education and outreach.
- 3899 a. The permittee shall implement a public education and outreach program designed
- 3900 to:
- 3901 (1) Increase the public's knowledge of how to reduce stormwater pollution, placing
- 3902 priority on reducing impacts to impaired waters and other local water pollution
- 3903 concerns;
- 3904 (2) Increase the public's knowledge of hazards associated with illegal discharges and
- 3905 improper disposal of waste, including pertinent legal implications; and
- 3906 (3) Implement a diverse program with strategies that are targeted toward individuals
- 3907 or groups most likely to have significant stormwater impacts.
- 3908 b. The permittee shall identify no fewer than three high-priority stormwater issues to
- 3909 meet the goal of educating the public in accordance with Part I E 1 a. High-priority
- 3910 issues may include the following examples: Chesapeake Bay nutrients, pet wastes,
- 3911 local receiving water impairments, TMDLs, high-quality receiving waters, litter control,
- 3912 BMP maintenance, anti-icing and deicing agent application, planned green
- 3913 infrastructure redevelopment, planned ecosystem restoration projects, and illicit
- 3914 discharges from commercial sites.
- 3915 c. The high-priority public education and outreach program, as a whole, shall:
- 3916 (1) Clearly identify the high-priority stormwater issues;
- 3917 (2) Explain the importance of the high-priority stormwater issues;
- 3918 (3) Include measures or actions the public can take to minimize the impact of the high-
- 3919 priority stormwater issues; and
- 3920 (4) Provide a contact and telephone number, website, or location where the public can
- 3921 find out more information.
- 3922 d. The permittee shall use two or more of the strategies listed in Table 1 per year to
- 3923 communicate to the target audience the high-priority stormwater issues identified in
- 3924 accordance with Part I E 1 b, including how to reduce stormwater pollution.

Table 1 Strategies for Public Education and Outreach	
Strategies	Examples (provided as examples and are not meant to be all inclusive or lin
Traditional written materials	Informational brochures, newsletters, fact sheets, utility bill inserts, or recreational guides of citizens
Alternative materials	Bumper stickers, refrigerator magnets, t-shirts, or drink koozies
Signage	Temporary or permanent signage in public places or facilities, vehicle signage, bill boards, stenciling
Media materials	Information disseminated through electronic media, radio, televisions, movie theater, news, maps
Speaking engagements	Presentations to school, church, industry, trade, special interest, or community groups
Curriculum materials	Materials developed for school-aged children, students at local colleges or universities, or offered to local citizens

Training materials	Materials developed to disseminate during workshops offered to local citizens, trade organ officials
Public education activities	Booth at community fair, demonstration of stormwater control projects, presentation of sto schools to meet applicable education Standards of Learning or curriculum requirements, c
Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastru redevelopment, ecosystem restoration projects, TMDL development, climate change's effe management, voluntary residential low impact development, or other stormwater issues

- 3925 e. The permittee may coordinate its public education and outreach efforts with other  
3926 MS4 permittees; however, each permittee shall be individually responsible for meeting  
3927 all of its state permit requirements.
- 3928 f. The MS4 program plan shall include:
- 3929 (1) A list of the high-priority stormwater issues the permittee will communicate to the  
3930 public as part of the public education and outreach program;
- 3931 (2) The rationale for selection of each high-priority stormwater issue and an  
3932 explanation of how each education or outreach strategy is intended to have a positive  
3933 impact on stormwater discharges;
- 3934 (3) Identification of the target audience to receive each high-priority stormwater  
3935 message;
- 3936 (4) Nontraditional permittees may identify staff, students, members of the general  
3937 public, and other users of facilities operated by the permittee as the target audience  
3938 for education and outreach strategies;
- 3939 (5) Traditional permittees may identify staff and students as part of the target audience  
3940 for education and outreach strategies; however, staff shall not be the majority of the  
3941 target audience;
- 3942 (6) Staff training required in accordance with Part I E 6 d does not qualify as a strategy  
3943 for public education and outreach;
- 3944 (7) The strategies from Table 1 of Part I E 1 d to be used to communicate each high-  
3945 priority stormwater message; and
- 3946 (8) The anticipated time periods the messages will be communicated or made  
3947 available to the public.
- 3948 g. The annual report shall include the following information:
- 3949 (1) A list of the high-priority stormwater issues the permittee addressed in the public  
3950 education and outreach program;
- 3951 (2) A summary of the public education and outreach activities conducted for the report  
3952 year, including the strategies used to communicate the identified high-priority issues;
- 3953 (3) A description of any changes in high-priority stormwater issues, including,  
3954 strategies used to communicate high-priority stormwater issues or target audiences  
3955 for the public education and outreach plan. The permittee shall provide a rationale for  
3956 any of these changes ; and
- 3957 (4) A description of public education and outreach activities conducted that included  
3958 education regarding climate change.
- 3959 2. Public involvement and participation.
- 3960 a. The permittee shall develop and implement procedures for the following:

- 3961 (1) The public to report potential illicit discharges, improper disposal, or spills to the  
 3962 MS4, complaints regarding land disturbing activities, or other potential stormwater  
 3963 pollution concerns;
- 3964 (2) The public to provide comments on the permittee's MS4 program plan;  
 3965 (3) Responding to public comments received on the MS4 program plan ; and  
 3966 (4) Maintaining documentation of public comments received on the MS4 program and  
 3967 associated MS4 program plan and the permittee's response.
- 3968 b. No later than three months after this permit's effective date, the existing permittee  
 3969 shall update and maintain the webpage dedicated to the MS4 program and stormwater  
 3970 pollution prevention. The following information shall be posted on this webpage:
- 3971 (1) The effective MS4 permit and coverage letter;  
 3972 (2) The most current MS4 program plan or location where the MS4 program plan can  
 3973 be obtained;
- 3974 (3) The annual report for each year of the term covered by this permit no later than 30  
 3975 days after submittal to the department;
- 3976 (4) For permittees whose regulated MS4 is located partially or entirely in the  
 3977 Chesapeake Bay watershed, the most current Chesapeake Bay TMDL action plan or  
 3978 location where the Chesapeake Bay TMDL action plan can be obtained;
- 3979 (5) For permittees whose regulated MS4 is located partially or entirely in the  
 3980 Chesapeake Bay watershed, the Chesapeake Bay TMDL implementation annual  
 3981 status reports for each year of the term covered by this permit no later than 30 days  
 3982 after submittal to the department;
- 3983 (6) A mechanism for the public to report potential illicit discharges, improper disposal,  
 3984 or spills to the MS4, complaints regarding land disturbing activities, or other potential  
 3985 stormwater pollution concerns in accordance with Part I E 2 a (1);
- 3986 (7) Methods for how the public can provide comments on the permittee's MS4 program  
 3987 plan in accordance with Part I E 2 a (2) and if applicable, the Chesapeake Bay TMDL  
 3988 action plan in accordance with Part II A 13; and
- 3989 (8) Federal and state nontraditional permittees with security policies preventing a MS4  
 3990 program and stormwater pollution prevention webpage from being publicly accessible  
 3991 may utilize an internal staff accessible webpage such as an intranet webpage to meet  
 3992 the requirements of Part 1 E 2 b.
- 3993 c. Traditional permittees shall implement no fewer than four activities per year from  
 3994 two or more of the categories listed in Table 2 to provide an opportunity for public  
 3995 involvement to improve water quality and support local restoration and clean-up  
 3996 projects.
- 3997 d. Nontraditional permittees shall implement, promote, participate in, or coordinate on  
 3998 no fewer than four activities per year from two or more of the categories listed in Table  
 3999 2 to provide an opportunity for public involvement to improve water quality and support  
 4000 local restoration and clean-up projects.

Table 2 Public Involvement Opportunities	
Public involvement opportunities	Examples (provided as example and are not meant to be all inclusive of)
Monitoring	Establish or support citizen monitoring group

Restoration	Stream , watershed, shoreline, beach, or park clean-up day, adopt-a-waterway program, riparian buffer plantings
Public education activities	Booth at community fair, demonstration of stormwater control projects, climate change's management, presentation of stormwater materials to schools to meet applicable educational or curriculum requirements, or watershed walks
Public meetings	Public meetings on proposed community stormwater management retrofits, green infrastructure ecosystem restoration projects, TMDL development, voluntary residential low impact development change's effects on stormwater management, or other stormwater issues
Disposal or collection events	Household hazardous chemicals collection, vehicle fluids collection
Pollution prevention	Adopt-a-storm drain program, implement a storm drain marking program, promote use of BMPs, implement pet waste stations in public areas, adopt-a-street program.

- 4001 e. The permittee may coordinate the public involvement opportunities listed in Table 2  
4002 with other MS4 permittees; however, each permittee shall be individually responsible  
4003 for meeting all of the permit requirements.
- 4004 f. The permittee may include staff and students in public participation events; however,  
4005 the activity cannot solely include or be limited to staff participants with stormwater,  
4006 groundskeeping, and maintenance duties in order for an event to qualify as a public  
4007 participation event.
- 4008 g. Staff training required in accordance with Part I E 6 d does not qualify as a public  
4009 participation event unless the training activity solicits participation from target  
4010 audiences beyond staff or contractors with stormwater, groundskeeping, and  
4011 maintenance duties.
- 4012 h. The MS4 program plan shall include:
- 4013 (1) The webpage address where mechanisms for the public to report (i) potential illicit  
4014 discharges, improper disposal, or spills to the MS4, (ii) complaints regarding land  
4015 disturbing activities, or (iii) other potential stormwater pollution concerns;
- 4016 (2) The webpage address that contains the methods for how the public can provide  
4017 input on the permittee's MS4 program; and
- 4018 (3) A description of the public involvement activities to be implemented by the  
4019 permittee, the anticipated time period the activities will occur, and a metric for each  
4020 activity to determine if the activity is beneficial to water quality. An example of metrics  
4021 may include the weight of trash collected from a stream cleanup or the number of  
4022 participants in a hazardous waste collection event.
- 4023 i. The annual report shall include the following information:
- 4024 (1) A summary of any public comments on the MS4 program received and how the  
4025 permittee responded;
- 4026 (2) A summary of stormwater pollution complaints received under the procedures  
4027 established in Part I E 2 a (1), excluding natural flooding complaints, and how the  
4028 permittee responded;
- 4029 (3) A webpage address to the permittee's MS4 program and stormwater website;
- 4030 (4) Federal and state nontraditional permittees with security policies preventing the  
4031 MS4 program and stormwater pollution prevention webpage from being publicly  
4032 accessible utilizing an internal staff accessible website, such as intranet, shall provide

4033 evidence of the current internal MS4 program and stormwater pollution prevention  
4034 webpage;

4035 (5) A description of the public involvement activities implemented by the permittee,  
4036 including any efforts to reach out and engage all economic and ethnic groups;

4037 (6) A description of public education and outreach activities conducted that also  
4038 included education regarding climate change;

4039 (7) A report of the metric as defined for each activity and an evaluation as to whether  
4040 or not the activity is beneficial to improving water quality; and

4041 (8) The name of other MS4 permittees with whom the permittee collaborated in the  
4042 public involvement opportunities.

4043 3. Illicit discharge detection and elimination.

4044 a. The permittee shall develop and maintain an accurate MS4 map and information  
4045 table as follows:

4046 (1) An updated map of the MS4 owned or operated by the permittee within the MS4  
4047 regulated service area no later than 24 months after the permit effective date that  
4048 includes, at a minimum:

4049 (a) MS4 outfalls discharging to surface waters, except as follows:

4050 (i) In cases where the outfall is located outside of the MS4 permittee's legal  
4051 responsibility, the permittee may elect to map the known point of discharge location  
4052 closest to the actual outfall; and

4053 (ii) In cases where the MS4 outfall discharges to receiving water channelized  
4054 underground, the permittee may elect to map the point downstream at which the  
4055 receiving water emerges above ground as an outfall discharge location. If there are  
4056 multiple outfalls discharging to an underground channelized receiving water, the map  
4057 shall identify that an outfall discharge location represents more than one outfall. This  
4058 is an option a permittee may choose to use and recognizes the difficulties in accessing  
4059 outfalls to underground channelized stream conveyances for purposes of mapping,  
4060 screening, or monitoring;

4061 (b) A unique identifier for each mapped item required in Part I E 3;

4062 (c) The name and location of receiving waters to which the MS4 outfall or point of  
4063 discharge discharges;

4064 (d) MS4 regulated service area; and

4065 (e) Stormwater management facilities owned or operated by the permittee.

4066 (2) The permittee shall maintain an outfall information table associated with the MS4  
4067 map that includes the following information for each outfall or point of discharge for  
4068 those cases in which the permittee elects to map the known point of discharge in  
4069 accordance with Part I E 3 a (1) (a). The outfall information table may be maintained  
4070 as a shapefile attribute table. The outfall information table shall contain the following:

4071 (a) A unique identifier as specified on the MS4 map;

4072 (b) The latitude and longitude of the outfall or point of discharge;

4073 (c) The estimated regulated acreage draining to the outfall or point of discharge;

4074 (d) The name of the receiving water;

4075 (e) The 6th Order Hydrologic Unit Code of the receiving water;

4076 (f) An indication as to whether the receiving water is listed as impaired in the Virginia  
4077 2022 305(b)/303(d) Water Quality Assessment Integrated Report; and

4078 (g) The name of any EPA approved TMDLs for which the permittee is assigned a  
4079 wasteload allocation.

4080 (3) No later than 24 months after permit issuance, the permittee shall submit to DEQ,  
4081 a format file geodatabase or two shapefiles that contain at a minimum:

4082 (a) A point feature class or shapefile for outfalls with an attribute table containing outfall  
4083 data elements required in accordance with Part I E 3 a (2); and

4084 (b) A polygon feature class or shapefile for the MS4 service area as required in  
4085 accordance with Part I E 3 a (1) (d) with an attribute table containing the following  
4086 information:

4087 (i) MS4 operator name;

4088 (ii) MS4 permit number (VAR04); and

4089 (iii) MS4 service area total acreage rounded to the nearest hundredth.

4090 (4) All file geodatabase feature classes or shapefiles shall be submitted in the following  
4091 data format standards:

4092 (a) Point data in NAD83 or WGS84 decimal degrees global positional system  
4093 coordinates;

4094 (b) Data projected in Virginia Lambert Conformal Conic format;

4095 (c) Outfall location accuracy shall be represented in decimal degrees rounded to at  
4096 least the fifth decimal place for latitude and longitude to ensure point location accuracy  
4097 (e.g., 37.61741, -78.15279); and

4098 (d) Metadata that shall provide a description of each feature class or shapefile dataset,  
4099 units of measure as applicable, coordinate system, and projection.

4100 (5) No later than October 1 of each year, the permittee shall update the MS4 map and  
4101 outfall information table to include any new outfalls constructed or TMDLs approved  
4102 or both during the immediate preceding reporting period.

4103 (6) The permittee shall provide written notification to any downstream adjacent MS4  
4104 of any known physical interconnection established or discovered after the effective  
4105 date of this permit.

4106 b. The permittee shall prohibit, through ordinance, policy, standard operating  
4107 procedures, or other legal mechanism, to the extent allowable under federal, state, or  
4108 local law, regulations, or ordinances, unauthorized nonstormwater discharges into the  
4109 MS4. Nonstormwater discharges or flows identified in 9VAC25-890-20 D 3 shall only  
4110 be addressed if they are identified by the permittee as a significant contributor of  
4111 pollutants discharging to the MS4. Flows that have been identified by the department  
4112 as de minimis discharges are not significant sources of pollutants to surface water.

4113 c. The permittee shall maintain, implement, and enforce illicit discharge detection and  
4114 elimination (IDDE) written procedures designed to detect, identify, and address  
4115 unauthorized nonstormwater discharges, including illegal dumping, to the MS4 to  
4116 effectively eliminate the unauthorized discharge. Written procedures shall include:

4117 (1) A description of the legal authorities, policies, standard operating procedures, or  
4118 other legal mechanisms available to the permittee to eliminate identified sources of  
4119 ongoing illicit discharges, including procedures for using legal enforcement authorities.

4120 (2) Dry weather field screening protocols to detect, identify, and eliminate illicit  
4121 discharges to the MS4. The protocol shall include:

4122 (a) A prioritized schedule of field screening activities and rationale for prioritization  
4123 determined by the permittee based on such criteria as age of the infrastructure, land  
4124 use, historical illegal discharges, dumping, or cross connections;

4125 (b) If the total number of MS4 outfalls is equal to or less than 50, a schedule to screen  
4126 all outfalls annually;

4127 (c) If the total number of MS4 outfalls is greater than 50, a schedule to screen a  
4128 minimum of 50 outfalls annually such that no more than 50% are screened in the  
4129 previous 12-month period. The 50% criteria is not applicable if all outfalls have been  
4130 screened in the previous three years;

4131 (d) The permittee may adopt a risk-based approach to dry weather screening  
4132 identifying observation points based upon illicit discharge risks upstream of an outfall.  
4133 Observation points may include points of interconnection, manholes, points of  
4134 discharge, conveyances, or inlets suspected to have a high likelihood of receiving illicit  
4135 discharges;

4136 (e) Each observation point screened may be counted as one outfall screening activity  
4137 equivalent and counted towards the requirements of Part I E 3 c (2) (b) or (2) (c);  
4138 however, at least 50% of the minimum annual screening events must include outfall  
4139 screening;

4140 (f) Illicit discharges reported by the public and subsequent investigations may not be  
4141 counted as screening events; however once the resolution of the investigation and the  
4142 date the investigation was closed has been documented, an observation point may be  
4143 established for future screening events; and

4144 (g) A checklist or mechanism to track the following information for dry weather  
4145 screening events:

4146 (i) The unique identifier for the outfall or observation point;

4147 (ii) Time since the last precipitation event;

4148 (iii) The estimated quantity of the last precipitation event;

4149 (iv) Site descriptions (e.g., conveyance type and dominant watershed land uses);

4150 (v) Observed indicators of possible illicit discharge events, such as floatables,  
4151 deposits, stains, and vegetative conditions (e.g., dying or dead vegetation, excessive  
4152 vegetative growth);

4153 (vi) Whether or not a discharge was observed;

4154 (vii) If a discharge was observed, the estimated discharge rate and visual  
4155 characteristics of the discharge (e.g., odor, color, clarity) and the physical condition of  
4156 the outfall; and

4157 (viii) For observation points, the location, downstream outfall unique identifier, and risk  
4158 factors or rationale for establishing the observation point.

4159 (3) A timeframe upon which to conduct an investigation to identify and locate the  
4160 source of any observed unauthorized nonstormwater discharge. Priority of  
4161 investigations shall be given to discharges of sanitary sewage and those believed to  
4162 be a risk to human health and public safety. Discharges authorized under a separate  
4163 VPDES or state permit require no further action under this permit.

4164 (4) Methodologies to determine the source of all illicit discharges. If the permittee is  
4165 unable to identify the source of an illicit discharge within six months of beginning the  
4166 investigation then the permittee shall document that the source remains unidentified.  
4167 If the observed discharge is intermittent, the permittee shall document that attempts to  
4168 observe the discharge flowing were unsuccessful.

4169 (5) Methodologies for conducting a follow-up investigation for illicit discharges that are  
4170 continuous or that permittees expect to occur more frequently than a one-time  
4171 discharge to verify that the discharge has been eliminated except as provided for in  
4172 Part I E 3 c (4);

4173 (6) A mechanism to track all illicit discharge investigations to document the following:  
4174 (a) The dates that the illicit discharge was initially observed, reported, or both;  
4175 (b) The results of the investigation, including the source, if identified;  
4176 (c) Any follow-up to the investigation;  
4177 (d) Resolution of the investigation; and  
4178 (e) The date that the investigation was closed.

4179 d. The MS4 program plan shall include:  
4180 (1) The MS4 map and outfall information table required by Part I E 3 a. The map and  
4181 outfall information table may be incorporated into the MS4 program plan by reference.  
4182 The map shall be made available to the department within 14 days upon request;  
4183 (2) Copies of written notifications of physical interconnections given by the permittee  
4184 to other MS4s; and  
4185 (3) The IDDE procedures described in Part I E 3 c.

4186 e. The annual report shall include:  
4187 (1) A confirmation statement that the MS4 map and outfall information table have been  
4188 updated to reflect any changes to the MS4 occurring on or before June 30 of the  
4189 reporting year;  
4190 (2) The total number of outfalls and observation points screened during the reporting  
4191 period as part of the dry weather screening program; and  
4192 (3) A list of illicit discharges to the MS4, including spills reaching the MS4 with  
4193 information as follows:  
4194 (a) The location and source of illicit discharge;  
4195 (b) The dates that the discharge was observed, reported, or both;  
4196 (c) Whether the discharge was discovered by the permittee during dry weather  
4197 screening, reported by the public, or other method (describe);  
4198 (d) How the investigation was resolved;  
4199 (e) A description of any follow-up activities; and  
4200 (f) The date the investigation was closed.

4201 4. Construction site stormwater runoff and erosion and sediment control.  
4202 a. The permittee shall utilize its legal authority, such as ordinances, permits, orders,  
4203 specific contract language, and interjurisdictional agreements, to address discharges  
4204 entering the MS4 from regulated construction site stormwater runoff. The permittee  
4205 shall control construction site stormwater runoff as follows:  
4206 (1) If the traditional permittee is a city, county, or town that has adopted a Virginia  
4207 Erosion and ~~Sediment Control~~ Stormwater Management Program (~~VESCP~~) (VESMP),  
4208 the permittee shall implement the ~~VESCP~~ VESMP consistent with the Virginia Erosion  
4209 and ~~Sediment Control~~ Law (~~§ 62.1-44.15:51~~ Stormwater Management Act § 62.1-  
4210 44.15:24 et seq. of the Code of Virginia) and Virginia Erosion and ~~Sediment Control~~  
4211 Regulations (~~9VAC25-840~~) Stormwater Management Regulation (9VAC25-875);  
4212 (2) If the traditional permittee is a town that ~~has not adopted a VESCP~~, implementation  
4213 is required to adopt and administer a Virginia Erosion and Stormwater Management

4214 Program (VESMP), the town may, pursuant to § 62.1-44.15:27 C of the Code of  
4215 Virginia, enter into an agreement with the county the town lies within to become subject  
4216 to the county's VESMP. If a town lies within the boundaries of more than one county,  
4217 it may enter into an agreement with any of those counties that operates a VESMP.  
4218 Implementation of a ~~VESCP~~ VESMP, consistent with the Virginia Erosion and  
4219 Sediment Control Law (~~§ 62.1-44.15:54~~ Stormwater Management Act (§ 62.1-  
4220 44.15:24 et seq. of the Code of Virginia) and Virginia Erosion and Sediment Control  
4221 Regulations (~~9VAC25-840~~) Stormwater Management Regulation (9VAC25-875) by  
4222 the surrounding county shall constitute compliance with Part I E 4 a; such town shall  
4223 notify the surrounding county of erosion, sedimentation, or other construction  
4224 stormwater runoff problems;

4225 (3) If the nontraditional permittee is a state agency; public institution of higher  
4226 education, including community colleges, colleges, and universities; or federal entity  
4227 and has developed standards and specifications in accordance with the Virginia  
4228 Erosion and ~~Sediment Control Law~~ Stormwater Management Act (§ ~~62.1-44.15:51~~  
4229 ~~62.1-44.15:24~~ et seq. of the Code of Virginia) and Virginia Erosion and ~~Sediment~~  
4230 ~~Control Regulations~~ (~~9VAC25-840~~) Stormwater Management Regulation (9VAC25-  
4231 875), the permittee shall implement the most recent department approved standards  
4232 and specifications; or

4233 (4) If the nontraditional permittee is a state agency; public institution of higher  
4234 education, including community colleges, colleges, and universities; or federal entity  
4235 and has not developed standards and specifications in accordance with the Virginia  
4236 Erosion and ~~Sediment Control Law~~ Stormwater Management Act (§ ~~62.1-44.15:51~~  
4237 ~~62.1-44.15:24~~ et seq. of the Code of Virginia) and Virginia Erosion and ~~Sediment~~  
4238 ~~Control Regulations~~ (~~9VAC25-840~~) Stormwater Management Regulation, (9VAC25-  
4239 875), the permittee shall inspect all land disturbing activities as defined in § ~~62.1-~~  
4240 ~~44.15:51~~ ~~62.1-44.15:24~~ of the Code of Virginia that result in the disturbance of 10,000  
4241 square feet or greater, or 2,500 square feet or greater in accordance with areas  
4242 designated under the Chesapeake Bay Preservation Act, as follows:

4243 (a) During or immediately following initial installation of erosion and sediment controls;  
4244 (b) At least once per every two-week period;  
4245 (c) Within 48 hours following any runoff producing storm event; and  
4246 (d) At the completion of the project prior to the release of any performance bond.

4247 (5) If the nontraditional permittee is a school board or other local government body,  
4248 the permittee shall inspect those projects resulting in a land disturbance as defined in  
4249 § ~~62.1-44.15:51~~ 62.1-44.15:24 of the Code of Virginia occurring on lands owned or  
4250 operated by the permittee that result in the disturbance of 10,000 square feet or  
4251 greater, 2,500 square feet or greater in accordance with areas designated under the  
4252 Chesapeake Bay Preservation Act, or in accordance with more stringent thresholds  
4253 established by the local government, as follows:

4254 (a) During or immediately following initial installation of erosion and sediment controls;  
4255 (b) At least once per every two-week period;  
4256 (c) Within 48 hours following any runoff producing storm event; and  
4257 (d) At the completion of the project prior to the release of any performance bond.

4258 b. The permittee shall require implementation of appropriate controls to prevent  
4259 nonstormwater discharges to the MS4, such as wastewater, concrete washout, fuels  
4260 and oils, and other illicit discharges identified during land disturbing activity inspections

4261 . The discharge of nonstormwater discharges other than those identified in 9VAC25-  
4262 890-20 D through the MS4 is not authorized by this state permit.

4263 c. Employees and contractors serving as plan reviewers, inspectors, program  
4264 administrators, and construction site operators shall obtain the appropriate  
4265 certifications as required under the Virginia Erosion and ~~Sediment Control Law~~  
4266 Stormwater Management Act and its attendant regulations;

4267 d. The permittee's MS4 program plan shall include:

4268 (1) If the permittee implements ~~an erosion and sediment control program~~ a Virginia  
4269 Erosion and Stormwater Management Program (VESMP) for construction site  
4270 stormwater runoff in accordance with Part I E 4 a (1), the local ordinance citations for  
4271 the ~~VESCP program~~ VESMP;

4272 (2) If the permittee is a town that does not implement an erosion and ~~sediment control~~  
4273 stormwater management program for construction site stormwater runoff in  
4274 accordance with Part I E 4 a (2), the county ordinance citations for the ~~VESCP~~ VESMP  
4275 program the town is subject to;

4276 (3) If the permittee implements ~~annual~~ standards and specifications for erosion and  
4277 sediment control and construction site stormwater runoff in accordance with Part I E 4  
4278 a (3):

4279 (a) The most recently approved standards and specifications or if incorporated by  
4280 reference, the location where the standards and specifications can be viewed; and

4281 (b) A copy of the most recent standards and specifications approval letter from the  
4282 department;

4283 (4) A description of the legal authorities utilized to ensure compliance with Part I E 4 a  
4284 for erosion and sediment control and construction site stormwater runoff control, such  
4285 as ordinances, permits, orders, specific contract language, policies, and  
4286 interjurisdictional agreements;

4287 (5) For traditional permittees, written inspection procedures to ensure ~~VESCP~~  
4288 construction site stormwater runoff and erosion and sediment control requirements are  
4289 maintained in accordance with ~~9VAC25-840-90-A~~ 9VAC25-875-190 and onsite  
4290 erosion and sediment controls are properly implemented in accordance with ~~9VAC25-~~  
4291 ~~840-60-B~~ 9VAC25-875-140;

4292 (6) For nontraditional permittees, erosion and sediment control plans or ~~annual~~  
4293 standards and specifications shall be approved by the department in accordance with  
4294 § ~~62.1-44.15:55~~ 62.1-44.15:34 or 62.1-44.15:31 respectively of the Code of Virginia.  
4295 Compliance with approved erosion and sediment control plans or ~~annual~~ standards  
4296 and specifications shall be ensured by the permittee with written inspection procedures  
4297 that at minimum include the following:

4298 (a) An inspection checklist for documenting onsite erosion and sediment control  
4299 structures and systems are properly maintained and repaired as needed to ensure  
4300 continued performance of their intended function; and

4301 (b) A list of all associated documents utilized for inspections, including checklists,  
4302 department approved erosion and sediment control plans, or the most recently  
4303 department approved ~~annual~~ standards and specifications, and any other documents  
4304 utilized;

4305 (7) Traditional permittees shall maintain written procedures for requiring ~~VESCP~~  
4306 compliance through corrective action or enforcement action in accordance with ~~§ 62.1-~~  
4307 ~~44.15:58~~ the State Water Control Law, § 62.1-44.2 et seq. of the Code of Virginia;

4308 (8) Nontraditional permittees shall maintain written procedures for requiring  
4309 compliance with department approved erosion and sediment control plans and ~~annual~~  
4310 standards and specifications through corrective action or enforcement action to the  
4311 extent allowable under federal, state, or local law, regulation, ordinance, or other legal  
4312 mechanisms; and

4313 (9) The roles and responsibilities of each of the permittee's departments, divisions, or  
4314 subdivisions in implementing erosion and sediment control and construction site  
4315 stormwater runoff control requirements in Part I E 4.

4316 e. The annual report shall include the following:

4317 (1) Total number of erosion and sediment control inspections conducted;

4318 (2) Total number of each type of compliance action and enforcement action  
4319 implemented; and

4320 (3) For nontraditional permittees:

4321 (a) A confirmation statement that land disturbing projects that occurred during the  
4322 reporting period have been conducted in accordance with the current department  
4323 approved ~~annual~~ standards and specifications for erosion and sediment control; and

4324 (b) If any land disturbing projects were conducted without department approved ~~annual~~  
4325 standards and specifications, a list of all land disturbing projects that occurred during  
4326 the reporting period with erosion and sediment control plan approval dates for each  
4327 project.

4328 5. Post-construction stormwater management for new development and development on  
4329 prior developed lands.

4330 a. The permittee shall address post-construction stormwater runoff that enters the  
4331 MS4 from the following land disturbing activities by implementing a post-construction  
4332 stormwater runoff management program as follows:

4333 (1) If the traditional permittee is a city, county, or town, with an approved Virginia  
4334 Erosion and Stormwater Management Program (VSMP) (VESMP), the permittee shall  
4335 implement the ~~VSMP~~ VESMP consistent with the Virginia Erosion and Stormwater  
4336 Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and ~~VSMP~~  
4337 Regulations (9VAC25-870) Virginia Erosion and Stormwater Management Regulation  
4338 (9VAC25-875) as well as maintain an inspection and maintenance program in  
4339 accordance with Part I E 5 b and c;

4340 (2) If the traditional permittee is a town that has not adopted a ~~VSMP~~ VESMP, entering  
4341 into an agreement for the implementation of a ~~VSMP~~ VESMP consistent with the  
4342 Virginia Erosion and Stormwater Management Act (§ 62.1-44.15:24 et seq. of the  
4343 Code of Virginia) and ~~VSMP Regulations (9VAC25-870)~~ Virginia Erosion and  
4344 Stormwater Management Regulation (9VAC25-875) by the surrounding county shall  
4345 constitute compliance with Part I E 5 a; such town shall notify the surrounding county  
4346 of erosion, sedimentation, or other post-construction stormwater runoff problems and  
4347 maintain an inspection and maintenance program in accordance with Part I E 5 c and  
4348 d;

4349 (3) If the traditional permittee is a city, county, or town receiving initial permit coverage  
4350 during the permit term and must obtain ~~VSMP~~ VESMP approval from the department,  
4351 the permittee shall implement the ~~VSMP~~ VESMP consistent with the Virginia Erosion  
4352 and Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of Virginia) and  
4353 ~~VSMP Regulations (9VAC25-870)~~ Virginia Erosion and Stormwater Management  
4354 Regulation (9VAC25-875) as well as develop an inspection and maintenance program

4355 in accordance with Part I E 5 b and c no later than 60 months after receiving permit  
4356 coverage;

4357 (4) If the nontraditional permittee is a state agency; public institution of higher  
4358 education, including community colleges, colleges, and universities; or federal entity  
4359 and has ~~not~~ developed standards and specifications in accordance with the Virginia  
4360 Erosion and Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of  
4361 Virginia) and ~~VSMP Regulations (9VAC25-870)~~ Virginia Erosion and Stormwater  
4362 Management Regulation (9VAC25-875), the permittee shall implement the most  
4363 recent department approved standards and specifications and maintain an inspection  
4364 and maintenance program in accordance with Part I E 5 b;

4365 (5) If the nontraditional permittee is a state agency; public institution of higher  
4366 education, including community colleges, colleges, and universities; or federal entity,  
4367 and has not developed standards and specifications in accordance with the Virginia  
4368 Erosion and Stormwater Management Act (§ 62.1-44.15:24 et seq. of the Code of  
4369 Virginia) and ~~VSMP Regulations (9VAC25-870)~~ Virginia Erosion and Stormwater  
4370 Management Regulation (9VAC25-875), the permittee shall implement a post-  
4371 construction stormwater runoff control program through compliance with ~~9VAC25-870~~  
4372 9VAC25-875 and with the implementation of a maintenance and inspection program  
4373 consistent with Part I E 5 b no later than 60 months after receiving permit coverage;  
4374 or

4375 (6) If the nontraditional permittee is a school board or other local government body,  
4376 the permittee shall implement a post-construction stormwater runoff control program  
4377 through compliance with ~~9VAC25-870~~ 9VAC25-875 or in accordance with more  
4378 stringent local requirements, if applicable, and with the implementation of a  
4379 maintenance and inspection program consistent with Part I E 5 b.

4380 b. The permittee shall implement an inspection and maintenance program for those  
4381 stormwater management facilities owned or operated by the permittee as follows:

4382 (1) Within six months of the permit effective date, the permittee shall develop and  
4383 maintain written inspection and maintenance procedures in order to ensure adequate  
4384 long-term operation and maintenance of its stormwater management facilities. The  
4385 permittee may use inspection and maintenance specifications available from the  
4386 Virginia Stormwater BMP Clearinghouse or inspection and maintenance plans  
4387 developed in accordance with the department's Stormwater Local Assistance Fund  
4388 (SLAF) guidelines;

4389 (2) Employees and contractors implementing the stormwater program shall obtain the  
4390 appropriate certifications as required under the Virginia Erosion and Stormwater  
4391 Management Act and its attendant regulations;

4392 (3) The permittee shall inspect stormwater management facilities owned or operated  
4393 by the permittee no less frequently than once per year. The permittee may choose to  
4394 implement an alternative schedule to inspect these stormwater management facilities  
4395 based on facility type and expected maintenance needs provided that the alternative  
4396 schedule and rationale is included in the MS4 program plan. The alternative inspection  
4397 frequency shall be no less often than once per five years; and

4398 (4) If during the inspection of the stormwater management facility conducted in  
4399 accordance with Part I E 5 b (2), it is determined that maintenance is required, the  
4400 permittee shall conduct the maintenance in accordance with the written procedures  
4401 developed under Part I E 5 b (1).

4402 c. For traditional permittees described in Part I E 5 a (1) , (2), or (3), the permittee  
4403 shall:

- 4404 (1) Implement an inspection and enforcement program for stormwater management  
4405 facilities not owned by the permittee (i.e., privately owned) that includes:
- 4406 (a) An inspection frequency of no less often than once per five years for all privately  
4407 owned stormwater management facilities that discharge into the MS4; and
- 4408 (b) Adequate long-term operation and maintenance by the owner of the stormwater  
4409 management facility by requiring the owner to develop and record a maintenance  
4410 agreement, including an inspection schedule to the extent allowable under state or  
4411 local law or other legal mechanism;
- 4412 (2) Utilize its legal authority for enforcement of the maintenance responsibilities in  
4413 accordance with ~~9VAC25-870-112~~ 9VAC25-875-535 if maintenance is neglected by  
4414 the owner;
- 4415 (3) The permittee may develop and implement a progressive compliance and  
4416 enforcement strategy provided that the strategy is included in the MS4 program plan;
- 4417 (4) The permittee may utilize the inspection reports provided by the owner of a  
4418 stormwater management facility as part of an inspection and enforcement program in  
4419 accordance with ~~9VAC25-870-114 C~~ 9VAC25-875-140 D.
- 4420 d. The MS4 program plan shall include:
- 4421 (1) If the permittee implements a ~~VSMP~~ VESMP in accordance with Part I E 5 a (1) ,  
4422 (2), or (3):
- 4423 (a) A copy of the ~~VSMP~~ VESMP approval letter issued by the department;  
4424 (b) Written inspection procedures and all associated documents utilized in the  
4425 inspection of privately owned stormwater management facilities; and
- 4426 (c) Written procedures for compliance and enforcement of inspection and maintenance  
4427 requirements for privately owned stormwater management facilities;
- 4428 (2) If the permittee implements a post-development stormwater runoff control program  
4429 in accordance with Part I E 5 a (4):
- 4430 (a) The most recently approved standards and specifications or if incorporated by  
4431 reference, the location where the standards and specifications can be viewed; and
- 4432 (b) A copy of the most recent standards and specifications approval letter from the  
4433 department;
- 4434 (3) A description of the legal authorities utilized to ensure compliance with Part I E 5 a  
4435 for post-construction stormwater runoff control such as ordinances (provide citation as  
4436 appropriate), permits, orders, specific contract language, and interjurisdictional  
4437 agreements;
- 4438 (4) Written inspection and maintenance procedures and other associated template  
4439 documents utilized during inspection and maintenance of stormwater management  
4440 facilities owned or operated by the permittee; and
- 4441 (5) The roles and responsibilities of each of the permittee's departments, divisions, or  
4442 subdivisions in implementing the post-construction stormwater runoff control program.
- 4443 e. The annual report shall include the following information:
- 4444 (1) If the traditional permittee implements a ~~VSMP~~ VESMP in accordance with Part I  
4445 E 5 a (1) , (2), or (3):
- 4446 (a) The number of privately owned stormwater management facility inspections  
4447 conducted; and

- 4448 (b) The number of enforcement actions initiated by the permittee to ensure long-term  
4449 maintenance of privately owned stormwater management facilities including the type  
4450 of enforcement action;
- 4451 (2) Total number of inspections conducted on stormwater management facilities  
4452 owned or operated by the permittee;
- 4453 (3) A description of the significant maintenance, repair, or retrofit activities performed  
4454 on the stormwater management facilities owned or operated by the permittee to ensure  
4455 it continues to perform as designed. This does not include routine activities such as  
4456 grass mowing or trash collection;
- 4457 (4) For traditional permittees as specified in Part I E 5 a (1), a confirmation statement  
4458 that the permittee submitted stormwater management facility information through the  
4459 Virginia Construction Stormwater General Permit database for those land disturbing  
4460 activities for which the permittee was required to obtain coverage under the General  
4461 VPDES Permit for Discharges of Stormwater from Construction Activities in  
4462 accordance with Part III B 1 or a statement that the permittee did not complete any  
4463 projects requiring coverage under the General VPDES Permit for Discharges of  
4464 Stormwater from Construction Activities (9VAC25-880);
- 4465 (5) A confirmation statement that the permittee electronically reported stormwater  
4466 management facilities using the DEQ BMP Warehouse in accordance with Part III B 1  
4467 and 2; and
- 4468 (6) A confirmation statement that the permittee electronically reported stormwater  
4469 management facilities inspected using the DEQ BMP Warehouse in accordance with  
4470 Part III B 5.
- 4471 6. Pollution prevention and good housekeeping for facilities owned or operated by the  
4472 permittee within the MS4 service area.
- 4473 a. The permittee shall maintain and implement written good housekeeping procedures  
4474 for those activities listed in Part I E 6 b at facilities owned or operated by the permittee  
4475 designed to meet the following objectives:
- 4476 (1) Prevent illicit discharges;
- 4477 (2) Ensure permittee staff or contractors properly dispose of waste materials, including  
4478 landscape wastes and prevent waste materials from entering the MS4;
- 4479 (3) Prevent the discharge of wastewater or wash water not authorized in accordance  
4480 with 9VAC25-890-20 D 3 u, into the MS4 without authorization under a separate  
4481 VPDES permit; and
- 4482 (4) Minimize the pollutants in stormwater runoff.
- 4483 b. The permittee shall develop and implement written good housekeeping procedures  
4484 that meet the objectives established in Part I E 6 a for the following activities:
- 4485 (1) Road, street, sidewalk, and parking lot maintenance and cleaning:
- 4486 (a) Within 24 months of permit issuance, permittees that apply anti-icing and deicing  
4487 agents shall update and implement procedures in accordance with Part I E to include  
4488 implementation of best management practices for anti-icing and deicing agent  
4489 application, transport, and storage;
- 4490 (b) Procedures developed in accordance with Part I E shall prohibit the application of  
4491 any anti-icing or deicing agent containing urea or other forms of nitrogen or  
4492 phosphorus;
- 4493 (2) Renovation and significant exterior maintenance activities (e.g., painting, roof  
4494 resealing, and HVAC coil cleaning) not covered under a separate ~~VSMP~~ VPDES

4495 construction general permit. The permittee shall develop and implement procedures  
4496 no later than 36 months after permit issuance;

4497 (3) Discharging water pumped from construction and maintenance activities not  
4498 covered by another permit covering such activities;

4499 (4) Temporary storage of landscaping materials;

4500 (5) Maintenance of permittee owned or operated vehicles and equipment (i.e., prevent  
4501 pollutant discharges from leaking permittee vehicles and equipment);

4502 (6) Application of materials, including pesticides and herbicides shall not exceed  
4503 manufacturer's recommendations; and

4504 (7) Application of fertilizer shall not exceed maximum application rates established by  
4505 applicable nutrient management plans. For areas not covered under nutrient  
4506 management plans where fertilizer is applied, application rates shall not exceed  
4507 manufacturer's recommendations.

4508 c. The permittee shall require through the use of contract language, training, written  
4509 procedures, or other measures within the permittee's legal authority that contractors  
4510 employed by the permittee and engaging in activities described in Part I E 6 b follow  
4511 established good housekeeping procedures and use appropriate control measures to  
4512 minimize the discharge of pollutants to the MS4.

4513 d. The written procedures established in accordance with Part I E 6 a and b shall be  
4514 utilized as part of the employee training program , and the permittee shall develop a  
4515 written training plan for applicable field personnel that ensures the following:

4516 (1) Applicable field personnel shall receive training in the prevention, recognition, and  
4517 elimination of illicit discharges no less often than once per 24 months;

4518 (2) Employees performing road, street, sidewalk, and parking lot maintenance shall  
4519 receive training in good housekeeping procedures required under Part I E 6 b (1) no  
4520 less often than once per 24 months;

4521 (3) Employees working in and around facility maintenance, public works, or  
4522 recreational facilities shall receive training in applicable Part I E 6 a and b good  
4523 housekeeping procedures required no less often than once per 24 months;

4524 (4) Employees working in and around high-priority facilities with a stormwater pollution  
4525 prevention plan (SWPPP) shall receive training in applicable site specific SWPPP  
4526 procedures no less often than once per 24 months;

4527 (5) Employees whose duties include emergency spill control and response shall be  
4528 trained in spill control and response. Emergency responders, such as firefighters and  
4529 law-enforcement officers, trained on the handling of spill control and response as part  
4530 of a larger emergency response training shall satisfy this training requirement and be  
4531 documented in the training plan; and

4532 (6) Employees and contractors hired by the permittee who apply pesticides and  
4533 herbicides shall be trained and certified in accordance with the Virginia Pesticide  
4534 Control Act (§ 3.2-3900 et seq. of the Code of Virginia). Certification by the Virginia  
4535 Department of Agriculture and Consumer Services (VDACS) Pesticide and Herbicide  
4536 Applicator program shall constitute compliance with this requirement. Contracts for the  
4537 application of pesticide and herbicides executed after the effective date of this permit  
4538 shall require contractor certification.

4539 e. The permittee shall maintain documentation of each training activity conducted by  
4540 the permittee to fulfill the requirements of Part I E 6 d for a minimum of three years

4541 after training activity completion. The documentation shall include the following  
4542 information:

4543 (1) The date when applicable employees have completed the training activity;  
4544 (2) The number of employees who have completed the training activity; and  
4545 (3) The training objectives and good housekeeping procedures required under Part I  
4546 E 6 a covered by training activity.

4547 f. The permittee may fulfill the training requirements in Part I E 6 d, in total or in part,  
4548 through regional training programs involving two or more MS4 permittees; however,  
4549 the permittee shall remain responsible for ensuring compliance with the training  
4550 requirements.

4551 g. Within 12 months of permit coverage, the permittee shall identify any new high-  
4552 priority facilities located in expanded 2020 census urban areas with a population of at  
4553 least 50,000.

4554 h. Within 36 months of permit coverage, the permittee shall implement SWPPPs for  
4555 high-priority facilities meeting the conditions of Part I E 6 i and which are located in  
4556 expanded 2020 census urban areas with a population of at least 50,000.

4557 i. The permittee shall maintain and implement a site specific SWPPP for each high-  
4558 priority facility as defined in 9VAC25-890-1 that does not have or require separate  
4559 VPDES permit coverage, and which any of the following materials or activities occur  
4560 and are expected to have exposure to stormwater resulting from rain, snow, snowmelt,  
4561 or runoff:

4562 (1) Areas where residuals from using, storing, or cleaning machinery or equipment  
4563 remain and are exposed to stormwater;

4564 (2) Materials or residuals on the ground or in stormwater inlets from spills or leaks;

4565 (3) Material handling equipment;

4566 (4) Materials or products that would be expected to be mobilized in stormwater runoff  
4567 during loading or unloading or transporting activities (e.g., rock, salt, fill dirt);

4568 (5) Materials or products stored outdoors (except final products intended for outside  
4569 use where exposure to stormwater does not result in the discharge of pollutants);

4570 (6) Materials or products that would be expected to be mobilized in stormwater runoff  
4571 contained in open, deteriorated, or leaking storage drums, barrels, tanks, and similar  
4572 containers;

4573 (7) Waste material except waste in covered, nonleaking containers (e.g., dumpsters);

4574 (8) Application or disposal of process wastewater (unless otherwise permitted); or

4575 (9) Particulate matter or visible deposits of residuals from roof stacks, vents, or both  
4576 not otherwise regulated (i.e., under an air quality control permit) and evident in the  
4577 stormwater runoff.

4578 j. Each SWPPP as required in Part I E 6 g shall include the following:

4579 (1) A site description that includes a site map identifying all outfalls, direction of  
4580 stormwater flows, existing source controls, and receiving water bodies;

4581 (2) A description and checklist of the potential pollutants and pollutant sources;

4582 (3) A description of all potential nonstormwater discharges;

4583 (4) A description of all structural control measures, such as stormwater management  
4584 facilities and other pollutant source controls, applicable to SWPPP implementation  
4585 (e.g., permeable pavement or oil-water separators that discharge to sanitary sewer  
4586 are not applicable to the SWPPP), such as oil-water separators, and inlet protection

4587 designed to address potential pollutants and pollutant sources at risk of being  
4588 discharged to the MS4;

4589 (5) A maintenance schedule for all stormwater management facilities and other  
4590 pollutant source controls applicable to SWPPP implementation described in Part I E 6  
4591 h (4);

4592 (6) Site specific written procedures designed to reduce and prevent pollutant discharge  
4593 that incorporate by reference applicable good housekeeping procedures required  
4594 under Part I E 6 a and b;

4595 (7) A description of the applicable training as required in Part I E 6 d (4);

4596 (8) An inspection frequency of no less often than once per year and maintenance  
4597 requirements for site specific source controls. The date of each inspection and  
4598 associated findings and follow-up shall be logged in each SWPPP;

4599 (9) A log of each unauthorized discharge, release, or spill incident reported in  
4600 accordance with Part IV G including the following information:

4601 (a) Date of incident;

4602 (b) Material discharged, released, or spilled; and

4603 (c) Estimated quantity discharged, released, or spilled;

4604 (10) A log of modifications to the SWPPP made as the result of any unauthorized  
4605 discharge, release, or spill in accordance Part I E 6 j or changes in facility activities  
4606 and operation requiring SWPPP modification; and

4607 (11) The point of contact for SWPPP implementation.

4608 k. No later than June 30 of each year, the permittee shall annually review any high-  
4609 priority facility owned or operated by the permittee for which an SWPPP has not been  
4610 developed to determine if the facility meets any of the conditions described in Part I E  
4611 6 g. If the facility is determined to need an SWPPP, the permittee shall develop an  
4612 SWPPP meeting the requirements of Part I E 6 h no later than December 31 of that  
4613 same year. The permittee shall maintain a list of all high-priority facilities owned or  
4614 operated by the permittee not required to maintain an SWPPP in accordance with Part  
4615 I E 6 g and this list shall be available upon request.

4616 l. The permittee shall review the contents of any site specific SWPPP no later than 30  
4617 days after any unauthorized discharge, release, or spill reported in accordance with  
4618 Part IV G to determine if additional measures are necessary to prevent future  
4619 unauthorized discharges, releases, or spills. If necessary, the SWPPP shall be  
4620 updated no later than 90 days after the unauthorized discharge.

4621 m. The SWPPP shall be kept at the high-priority facility and utilized as part of employee  
4622 SWPPP training required in Part I E 6 d (4). The SWPPP and associated documents  
4623 may be maintained as a hard copy or electronically as long as the documents are  
4624 available to employees at the applicable site.

4625 n. If activities change at a facility such that the facility no longer meets the definition of  
4626 a high-priority facility , the permittee may remove the facility from the list of high-priority  
4627 facilities with a high potential to discharge pollutants.

4628 o. If activities change at a facility such that the facility no longer meets the criteria  
4629 requiring SWPPP coverage as described in Part I E 6 g, the permittee may remove  
4630 the facility from the list of high-priority facilities that require SWPPP coverage.

4631 p. The permittee shall maintain and implement turf and landscape nutrient  
4632 management plans that have been developed by a certified turf and landscape nutrient  
4633 management planner in accordance with § 10.1-104.2 of the Code of Virginia on all

4634 lands owned or operated by the permittee where nutrients are applied to a contiguous  
4635 area greater than one acre. If nutrients are being applied to achieve final stabilization  
4636 of a land disturbance project, application shall follow the manufacturer's  
4637 recommendations.

4638 q. Within 12 months of permit coverage, the permittee shall identify contiguous areas  
4639 greater than one acre located in expanded 2020 census urban areas with population  
4640 of at least 50,000 and within the permittee's MS4 service area requiring turf and  
4641 landscape nutrient management plans.

4642 r. Within 36 months of permit coverage, the permittee shall implement turf and  
4643 landscape nutrient management plans on contiguous areas greater than one acre  
4644 located in expanded 2020 census urban areas with a population of least 50,000 and  
4645 within the permittee's MS4 service area.

4646 s. If nutrients are being applied to achieve final stabilization of a land disturbance  
4647 project, application shall follow the manufacturer's recommendations. For newly  
4648 established turf where nutrients are applied to a contiguous area greater than one  
4649 acre, the permittee shall implement a nutrient management plan no later than six  
4650 months after the site achieves final stabilization.

4651 t. Nutrient management plans developed in accordance with Part I E 6 n shall be  
4652 submitted to the Department of Conservation and Recreation (DCR) for approval.

4653 u. Nutrient management plans that are expired as of the effective date of this permit  
4654 shall be submitted to DCR for renewal within six months after the effective date of this  
4655 permit. Thereafter, all nutrient management plans shall be submitted to DCR at least  
4656 30 days prior to nutrient management plan expiration. Within 36 months of permit  
4657 coverage, no nutrient management plans maintained by the permittee in accordance  
4658 with Part I E 6 n shall be expired due to DCR documented noncompliance with  
4659 4VAC50-85-130 provided to the permittee.

4660 v. Nutrient management plans may be maintained as a hard copy or electronically as  
4661 long as the documents are available to employees at the applicable site.

4662 w. Nontraditional permittees with lands regulated under § 10.1-104.4 of the Code of  
4663 Virginia, including state agencies, state colleges and universities, and other state  
4664 government entities, shall continue to implement turf and landscape nutrient  
4665 management plans in accordance with this statutory requirement.

4666 x. The MS4 program plan shall include:

4667 (1) A list of written good housekeeping procedures for the operations and maintenance  
4668 activities as required by Part I E 6 a and b;

4669 (2) A list of all high-priority facilities owned or operated by the permittee required to  
4670 maintain an SWPPP in accordance with Part I E 6 g that includes the facility name,  
4671 facility location, and the location of the SWPPP hardcopy or electronic document being  
4672 maintained. The SWPPP for each high-priority facility shall be incorporated by  
4673 reference;

4674 (3) A list of locations for which turf and landscape nutrient management plans are  
4675 required in accordance with Part I E 6 n and s, including the following information:

4676 (a) The total acreage covered by each nutrient management plan;

4677 (b) The DCR approval date and expiration date for each nutrient management plan;

4678 (c) The location of the nutrient management plan hardcopy or electronic document  
4679 being maintained;

- 4680 (4) A summary of mechanisms the permittee uses to ensure contractors working on  
4681 behalf of the permittees implement the necessary good housekeeping and pollution  
4682 prevention procedures, and stormwater pollution plans as appropriate; and  
4683 (5) The written training plan as required in Part I E 6 d.  
4684 y. The annual report shall include the following:  
4685 (1) A summary of any written procedures developed or modified in accordance with  
4686 Part I E 6 a and b during the reporting period;  
4687 (2) A confirmation statement that all high-priority facilities were reviewed to determine  
4688 if SWPPP coverage is needed during the reporting period;  
4689 (3) A list of any new SWPPPs developed in accordance Part I E 6 i during the reporting  
4690 period;  
4691 (4) A summary of any SWPPPs modified in accordance with Part I E 6 j, 6 l, or 6 m;  
4692 (5) The rationale of any high-priority facilities delisted in accordance with Part I E 6 l  
4693 or m during the reporting period;  
4694 (6) The status of each nutrient management plan as of June 30 of the reporting year  
4695 (e.g., approved, submitted and pending approval, and expired);  
4696 (7) A list of the training activities conducted in accordance with Part I E 6 d, including  
4697 the following information:  
4698 (a) The completion date for the training activity;  
4699 (b) The number of employees who completed the training activity; and  
4700 (c) The objectives and good housekeeping procedures covered by the training activity.

## 4701 Part II

### 4702 TMDL Special Conditions

#### 4703 A. Chesapeake Bay TMDL special condition.

4704 1. The Commonwealth in its Phase I , Phase II, and Phase III Chesapeake Bay TMDL  
4705 Watershed Implementation Plans (WIPs) committed to a phased approach for MS4s,  
4706 affording MS4 permittees up to three full five-year permit cycles to implement necessary  
4707 reductions. This permit is consistent with the Chesapeake Bay TMDL and the Virginia  
4708 Phase I , Phase II , and Phase III WIPs to meet the Level 2 (L2) scoping run for existing  
4709 developed lands as it represents an implementation of an additional 60% of L2 as  
4710 specified in the Phase I , Phase II, and Phase III WIPs. In combination with the 40%  
4711 reduction of L2 that has already been achieved, a total reduction no later than October 31,  
4712 2028, of 100% of L2 shall be achieved. Conditions of future permits will be consistent with  
4713 the TMDL or WIP conditions in place at the time of permit issuance.

4714 2. The following definitions apply to Part II of this state permit for the purpose of the  
4715 Chesapeake Bay TMDL special condition for discharges in the Chesapeake Bay  
4716 Watershed:

4717 "Existing sources" means pervious and impervious urban land uses served by the MS4  
4718 as of June 30, 2009.

4719 "New sources" means pervious and impervious urban land uses served by the MS4  
4720 developed or redeveloped on or after July 1, 2009.

4721 "Pollutants of concern" or "POC" means total nitrogen and total phosphorus.

4722 "Transitional sources" means regulated land disturbing activities that are temporary in  
4723 nature and discharge through the MS4.

4724 3. Reduction requirements for permittees previously covered under the General VPDES  
4725 Permit for Discharges of Stormwater from MS4 effective November 1, 2018. No later than

4726 October 31, 2028, the permittee shall reduce the load of total nitrogen and total  
 4727 phosphorus from existing developed lands served by the MS4 as of June 30, 2009, within  
 4728 the 2010 Census urbanized areas by at least 100% of the Level 2 (L2) Scoping Run  
 4729 Reductions. The 100% reduction is the sum of (i) the first phase reduction of 5.0% of the  
 4730 L2 Scoping Run Reductions based on the lands located within the 2000 Census urbanized  
 4731 areas required by June 30, 2018; (ii) the second phase reduction of at least 35% of the L2  
 4732 Scoping Run based on lands within the 2000 Census urbanized areas required by June  
 4733 30, 2023; (iii) the second phase reduction of at least 40% of the L2 Scoping Run, which  
 4734 shall only apply to the additional lands that were added by the 2010 expanded Census  
 4735 urbanized areas required by June 30, 2023; and (iv) the third phase reduction of least 60%  
 4736 of the L2 Scoping Run based on lands within the 2000 and 2010 expanded Census  
 4737 urbanized areas required by October 31, 2028. The required reduction shall be calculated  
 4738 using Tables 3a, 3b, 3c, and 3d as applicable:

		A	B	C	D
Pollutant	Subsource	Loading rate (lbs/ac/yr) <sup>1</sup>	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres) <sup>2</sup>	Load(lbs/yr) <sup>3</sup>	Percentage of MS4 required Chesapeake Bay total L2 loading reduction
Nitrogen	Regulated urban impervious	9.39			9%
	Regulated urban pervious	6.99			6%
Phosphorus	Regulated urban impervious	1.76			16%
	Regulated urban pervious	0.5			7.25%

<sup>1</sup>Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

<sup>2</sup>To determine the existing developed acres required in Column B, permittees should first determine the extent on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA impervious as of the baseline date of June 30, 2009.

<sup>3</sup>Column C = Column A x Column B.

<sup>4</sup>Column E = Column C x Column D .

<sup>5</sup>Column F = The sum of the subsource cumulative reduction required by 10/31/2028 (lbs/yr) as calculated in C

Table 3b  
Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the

		A	B	C	D
Pollutant	Subsource	Loading rate (lbs/ac/yr) <sup>1</sup>	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres) <sup>2</sup>	Load (lbs/yr) <sup>3</sup>	Percentage of MS4 required Chesapeake Bay total L2 loading reduction
Nitrogen	Regulated urban impervious	16.86			9%
	Regulated urban pervious	10.07			6%
Phosphorus	Regulated Urban Impervious	1.62			16%
	Regulated urban pervious	0.41			7.25%

<sup>1</sup>Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2

<sup>2</sup>To determine the existing developed acres required in Column B, permittees should first determine the extent on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA as impervious as of the baseline date of June 30, 2009.

<sup>3</sup>Column C = Column A x Column B.

<sup>4</sup>Column E = Column C x Column D .

<sup>5</sup>Column F = The sum of the subsource cumulative reduction required by 10/31/2028 (lbs/yr) as calculated in C

Table 3c  
Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the Ra

		A	B	C	D
Pollutant	Subsource	Loading rate (lbs/ac/yr) <sup>1</sup>	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres) <sup>2</sup>	Load (lbs/yr) <sup>3</sup>	Percentage of MS4 required Chesapeake Bay total L2 loading reduction

Nitrogen	Regulated urban impervious	9.38			9%
	Regulated urban pervious	5.34			6%
Phosphorus	Regulated urban impervious	1.41			16%
	Regulated urban pervious	0.38			7.25%

<sup>1</sup>Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

<sup>2</sup>To determine the existing developed acres required in Column B, permittees should first determine the extent of existing developed lands on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 CUA that are impervious as of the baseline date of June 30, 2009.

<sup>3</sup>Column C = Column A x Column B.

<sup>4</sup>Column E = Column C x Column D .

<sup>5</sup>Column F = The sum of the subsorce cumulative reduction required by 10/31/2028 (lbs/yr) as calculated in Column E.

Table 3d Calculation Sheet for Estimating Existing Source Loads and Reduction Requirements for the York River					
		A	B	C	D
Pollutant	Subsource	Loading rate (lbs/ac/yr) <sup>1</sup>	Existing developed lands as of 6/30/09 served by the MS4 within the 2010 CUA (acres) <sup>2</sup>	Load (lbs/yr) <sup>3</sup>	Percentage of MS4 required Chesapeake Bay total L2 loading reduction
Nitrogen	Regulated urban impervious	7.31			9%
	Regulated urban pervious	7.65			6%
Phosphorus	Regulated urban impervious	1.51			16%

	Regulated urban pervious	0.51			7.25%

<sup>1</sup>Edge of stream loading rate based on the Chesapeake Bay Watershed Model Progress Run 5.3.2.

<sup>2</sup>To determine the existing developed acres required in Column B, permittees should first determine the extent on the 2010 Census urbanized area (CUA). Next, permittees will need to delineate the lands within the 2010 C impervious as of the baseline date of June 30, 2009.

<sup>3</sup>Column C = Column A x Column B.

<sup>4</sup>Column E = Column C x Column D .

<sup>5</sup>Column F = The sum of the subsurface cumulative reduction required by 10/31/2028 (lbs/yr) as calculated in C

4742 4. No later than October 31, 2028, the permittee shall offset 100% of the increased loads  
4743 from new sources initiating construction between July 1, 2009, and October 31, 2023, and  
4744 designed in accordance with 9VAC25-870 Part II C (9VAC25-870-93 et seq.) Article 4 of  
4745 Part V of the Virginia Erosion and Stormwater Management Regulation (9VAC25-875-670  
4746 et seq.) if the following conditions apply:

- 4747 a. The activity disturbed one acre or greater; and
- 4748 b. The resulting total phosphorous load was greater than 0.45 lb/acre/year, which is
- 4749 equivalent to an average land cover condition of 16% impervious cover.

4750 The permittee shall utilize Table 4 of Part II A 5 to develop the equivalent pollutant load  
4751 for new sources of nitrogen meeting the requirements of this condition.

4752 5. No later than October 31, 2028, the permittee shall offset the increased loads from  
4753 projects grandfathered in accordance with 9VAC25-870-48 9VAC25-875-490 that begin  
4754 construction after July 1, 2014, if the following conditions apply:

- 4755 a. The activity disturbs one acre or greater; and
- 4756 b. The resulting total phosphorous load was greater than 0.45 lb/acre/year, which is
- 4757 equivalent to an average land cover condition of 16% impervious cover.

4758 The permittee shall utilize Table 4 to develop the equivalent pollutant load for  
4759 grandfathered sources of nitrogen meeting the requirements of this condition.

Table 4 Ratio of Phosphorus Loading Rate to Nitrogen Loading Rates for Chesapeake B	
Ratio of Phosphorus to Other POCs (Based on All Land Uses 2009 Progress Run)	Phosphorus Loading Rate (lbs/acre)
James River Basin, Lynnhaven, and Little Creek Basins	1.0
Potomac River Basin	1.0
Rappahannock River Basin	1.0
York River Basin (including Poquoson Coastal Basin)	1.0

4760 6. Reductions achieved in accordance with the General VPDES Permit for Discharges of  
4761 Stormwater from Small Municipal Separate Storm Sewer Systems effective July 1, 2013,

4762 and November 1, 2018, shall be applied toward the total reduction requirements to  
4763 demonstrate compliance with Part II A 3, A 4, and A 5.

4764 7. 40% of L2 reductions for total nitrogen and total phosphorus shall be maintained by the  
4765 permittee during the permit term.

4766 8. Reductions shall be achieved in each river basin as calculated in Part II A 3 or for  
4767 reductions in accordance with Part II A 4 and A 5 in the basin in which the new source or  
4768 grandfathered project occurred.

4769 9. Loading and reduction values greater than or equal to 10 pounds calculated in  
4770 accordance with Part II A 3, A 4, and A 5 shall be calculated and reported to the nearest  
4771 pound without regard to mathematical rules of precision. Loading and reduction values of  
4772 less than 10 pounds reported in accordance with Part II A 3, A 4, and A 5 shall be  
4773 calculated and reported to two significant digits.

4774 10. Reductions required in Part II A 3, A 4, and A 5 shall be achieved through one or more  
4775 of the following:

4776 a. BMPs approved by the Chesapeake Bay Program;

4777 b. BMPs approved by the department; or

4778 c. A trading program described in Part II A 11.

4779 11. The permittee may acquire and use total nitrogen and total phosphorus credits in  
4780 accordance with § 62.1-44.19:21 of the Code of Virginia for purposes of compliance with  
4781 the required reductions in Table 3a, Table 3b, Table 3c, and Table 3d of Part II A 3; Part  
4782 II A 4; and Part II A 5, provided the use of credits has been approved by the department.  
4783 The exchange of credits is subject to the following requirements:

4784 a. The credits are generated and applied to a compliance obligation in the same  
4785 calendar year;

4786 b. The credits are generated and applied to a compliance obligation in the same  
4787 tributary;

4788 c. The credits are acquired no later than June 1 immediately following the calendar  
4789 year in which the credits are applied;

4790 d. No later than June 1 immediately following the calendar year in which the credits  
4791 are applied, the permittee certifies on an MS4 Nutrient Credit Acquisition Form that  
4792 the permittee has acquired the credits; and

4793 e. Total nitrogen and total phosphorus credits shall be either point source credits  
4794 generated by point sources covered by the Watershed Permit for Total Nitrogen and  
4795 Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed  
4796 general permit issued pursuant to § 62.1-44.19:14 of the Code of Virginia or nonpoint  
4797 source credits certified pursuant to § 62.1-44.19:20 of the Code of Virginia.

4798 12. Chesapeake Bay TMDL action plan requirements.

4799 a. Permittees applying for initial coverage under this general permit shall submit a draft  
4800 first phase Chesapeake Bay TMDL action plan to the department no later than October  
4801 31, 2028, unless the department grants a later date. The required reduction shall be  
4802 calculated using Tables 3a, 3b, 3c, and 3d as applicable. The first phase action plan  
4803 shall achieve a minimum reduction of least 40% of the L2 Scoping Run based on lands  
4804 within the 2000 and 2010 expanded Census urbanized areas no later than October  
4805 31, 2033. The action plan shall include the following information:

4806 (1) The load and cumulative reduction calculations for each river basin calculated in  
4807 accordance with Part II A 3, A 4, and A 5 ;

4808 (2) The BMPs to be implemented by the permittee to achieve 40% of the reductions  
4809 calculated in Part II A 13 a:  
4810 (a) Type of BMP;  
4811 (b) Project name;  
4812 (c) Location;  
4813 (d) Percent removal efficiency for each pollutant of concern; and  
4814 (e) Calculation of the reduction expected to be achieved by the BMP calculated and  
4815 reported in accordance with the methodologies established in Part II A 9 for each  
4816 pollutant of concern;  
4817 (3) A preliminary schedule for implementation of the BMPs included in the Chesapeake  
4818 Bay TMDL action plan; and  
4819 (4) A summary of any comments received as a result of public participation required  
4820 in Part II A 14, the permittee's response, identification of any public meetings to  
4821 address public concerns, and any revisions made to Chesapeake Bay TMDL action  
4822 plan as a result of public participation.  
4823 b. For permittees previously covered under the General VPDES Permit for the  
4824 Discharge of Stormwater from MS4 effective November 1, 2018, no later than 12  
4825 months after the permit effective date, the permittee shall submit a third phase  
4826 Chesapeake Bay TMDL action plan for the reductions required in Part II A 3, A 4, and  
4827 A 5 that includes the following information:  
4828 (1) Any new or modified legal authorities, such as ordinances, permits, policy, specific  
4829 contract language, orders, and interjurisdictional agreements, implemented or needing  
4830 to be implemented to meet the requirements of Part II A 3, A 4, and A 5.  
4831 (2) The load and cumulative reduction calculations for each river basin calculated in  
4832 accordance with Part II A 3, A 4, and A 5.  
4833 (3) The total reductions achieved as of November 1, 2023, for each pollutant of  
4834 concern in each river basin.  
4835 (4) A list of BMPs implemented prior to November 1, 2023, to achieve reductions  
4836 associated with the Chesapeake Bay TMDL, including:  
4837 (a) The date of implementation; and  
4838 (b) The reductions achieved.  
4839 (5) The BMPs to be implemented by the permittee within 60 months of the effective  
4840 date of this permit to meet the cumulative reductions calculated in Part II A 3, A 4, and  
4841 A 5, including as applicable:  
4842 (a) Type of BMP;  
4843 (b) Project name;  
4844 (c) Location;  
4845 (d) Percent removal efficiency for each pollutant of concern;  
4846 (e) Calculation of the reduction expected to be achieved by the BMP calculated and  
4847 reported in accordance with the methodologies established in Part II A 9 for each  
4848 pollutant of concern; and  
4849 (f) A preliminary schedule for implementation of the BMPs included in the Chesapeake  
4850 Bay TMDL action plan.  
4851 (6) A summary of any comments received as a result of public participation required  
4852 in Part II A 13, the permittee's response, identification of any public meetings to

4853 address public concerns, and any revisions made to Chesapeake Bay TMDL action  
4854 plan as a result of public participation.

4855 13. Prior to submittal of the action plan required in Part II A 12 a and b, permittees shall  
4856 provide an opportunity for public comment for no fewer than 15 days on the additional  
4857 BMPs proposed in the third phase Chesapeake Bay TMDL action plan .

4858 14. Chesapeake Bay TMDL implementation annual status report.

4859 a. Permittees previously covered under the General VPDES Permit for Discharges of  
4860 Stormwater from MS4 effective November 1, 2018, shall submit a Chesapeake Bay  
4861 TMDL implementation annual status report in a method (i.e., how the permittee must  
4862 submit) and format (i.e., how the report shall be laid out) as specified by the  
4863 department no later than October 1 of each year. The report shall cover the previous  
4864 year from July 1 to June 30.

4865 b. Following notification from the department of the start date for the required electronic  
4866 submission of Chesapeake Bay TMDL implementation annual status reports, as  
4867 provided for in 9VAC25-31-1020, such forms and reports submitted after that date  
4868 shall be electronically submitted to the department in compliance with 9VAC25-31-  
4869 1020 and this section. There shall be at least a three-month notice provided between  
4870 the notification from the department and the date after which such forms and reports  
4871 must be submitted electronically.

4872 c. The year two Chesapeake Bay TMDL implementation annual status report shall  
4873 contain a summary of any public comments on the Chesapeake Bay TMDL action plan  
4874 received and how the permittee responded.

4875 d. Each Chesapeake Bay TMDL implementation annual status report shall include the  
4876 following information:

4877 (1) A list of Chesapeake Bay TMDL action plan BMPs, not including annual practices,  
4878 implemented prior to the reporting period that includes the following information for  
4879 reported BMP;

4880 (a) The number of BMPs for each BMP type;

4881 (b) The estimated reduction of pollutants of concern achieved by each BMP type and  
4882 reported in pounds of pollutant reduction per year; and

4883 (c) A confirmation statement that the permittee electronically reported Chesapeake  
4884 Bay TMDL action plan BMPs inspected using the DEQ BMP Warehouse in accordance  
4885 with Part III B 5.

4886 (2) A list of newly implemented BMPs including annual practices implemented during  
4887 the reporting period that includes the following information for each reported BMP or  
4888 a statement that no BMPs were implemented during the reporting period:

4889 (a) The BMP type and a description of the location for each BMP;

4890 (b) The estimated reduction of pollutants of concern achieved by each BMP and  
4891 reported in pounds of pollutant reduction per year; and

4892 (c) A confirmation statement that the permittee electronically reported BMPs using the  
4893 DEQ BMP Warehouse in accordance with Part III B 3.

4894 e. If the permittee acquired credits during the reporting period to meet all or a portion  
4895 of the required reductions in Part II A 3, A 4, or A 5, a statement that credits were  
4896 acquired.

4897 f. Pollutant load reductions generated by annual practices, such as street and storm  
4898 drain cleaning, shall only be applied to the compliance year in which the annual  
4899 practice was implemented.

4900 g. The progress, using the final design efficiency of the BMPs, toward meeting the  
4901 required cumulative reductions for total nitrogen and total phosphorus.

4902 h. Any revisions made to the Chesapeake Bay TMDL action plan.

4903 i. A list of BMPs that are planned to be implemented during the next reporting period.

4904 15. Within 60 months after permit issuance, the permittee shall update the Phase III  
4905 Chesapeake Bay TMDL action plan to offset the increased loads from new sources  
4906 initiating construction between July 1, 2009, and October 31, 2023, that are located in the  
4907 expanded 2020 census urban areas with a population of at least 50,000, and within the  
4908 permittee's MS4 service area, and designed in accordance with ~~9VAC25-870-Part II C~~  
4909 ~~(9VAC25-870-93 et seq.)~~ Article 4 of Part V of the Virginia Erosion and Stormwater  
4910 Management Regulation (9VAC25-875-670 et seq.), if the following conditions apply:

4911 a. The activity disturbed one acre or greater; and

4912 b. The resulting total phosphorous load was greater than 0.45 pounds per acre per  
4913 year, which is equivalent to an average land cover condition of 16% impervious cover.

4914 The permittee shall utilize Table 4 of Part II A 5 to develop the equivalent nitrogen pollutant  
4915 load for new sources meeting the requirements of this condition.

4916 16. Within 60 months after permit issuance, the permittee shall update the Phase III  
4917 Chesapeake Bay TMDL action plan to offset the increased loads from projects  
4918 grandfathered in accordance with ~~9VAC25-870-48~~ 9VAC25-875-490 that are located in  
4919 the expanded 2020 census urban areas with a population of least 50,000, and within the  
4920 permittee's MS4 service area, and began construction after July 1, 2014, if the following  
4921 conditions apply:

4922 a. The activity disturbs one acre or greater; and

4923 b. The resulting total phosphorous load was greater than 0.45 pounds per acre per  
4924 year, which is equivalent to an average land cover condition of 16% impervious cover.

4925 The permittee shall utilize Table 4 of Part II A 6 to develop the equivalent nitrogen pollutant  
4926 load for grandfathered sources meeting the requirements of this condition.

4927 B. Local TMDL special condition.

4928 1. Permittees applying for initial coverage under this general permit shall develop a local  
4929 TMDL action plan designed to reduce loadings for pollutants of concern if the permittee  
4930 discharges the pollutants of concern to an impaired water for which a TMDL has been  
4931 approved by the U.S. Environmental Protection Agency (EPA) prior to October 31, 2023,  
4932 and in which an individual or aggregate wasteload has been allocated to the permittee.  
4933 The permittee shall develop action plans to meet the conditions of Part II B 4, B 5, B 6, B  
4934 7, and B 8 as applicable. Each local TMDL action plan shall be provided to the department  
4935 no later than October 31, 2028, unless the department grants a later date.

4936 2. Permittees previously covered under the General VPDES Permit for Discharges of  
4937 Stormwater from MS4 effective November 1, 2018, shall develop and maintain a local  
4938 TMDL action plan designed to reduce loadings for pollutants of concern if the permittee  
4939 discharges the pollutants of concern to an impaired water for which a TMDL has been  
4940 approved by the U.S. Environmental Protection Agency (EPA) as described in Part II B 2  
4941 a and 2 b:

4942 a. For TMDLs approved by EPA prior to July 1, 2018, and in which an individual or  
4943 aggregate wasteload has been allocated to the permittee, the permittee shall develop  
4944 and initiate or update as applicable the local TMDL action plans to meet the conditions  
4945 of Part II B 4, B 6, B 7, and B 8, as applicable, no later than 18 months after the permit

4946 effective date and continue implementation of the action plan. Updated action plans  
 4947 shall include:

4948 (1) An evaluation of the results achieved by the previous action plan; and  
 4949 (2) Any adaptive management strategies incorporated into updated action plans based  
 4950 on action plan evaluation.

4951 b. For TMDLs approved by EPA on or after July 1, 2018, and prior to October 31, 2023,  
 4952 and in which an individual or aggregate wasteload has been allocated to the permittee,  
 4953 the permittee shall develop and initiate implementation of action plans to meet the  
 4954 conditions of Part II B 4, B 5, B 6, B 7, and B 8, as applicable no later than 30 months  
 4955 after the permit effective date.

4956 3. The permittee shall complete implementation of the TMDL action plans as determined  
 4957 by the schedule. TMDL action plans may be implemented in multiple phases over more  
 4958 than one permit cycle using the adaptive iterative approach provided adequate progress  
 4959 is achieved in the implementation of BMPs designed to reduce pollutant discharges in a  
 4960 manner that is consistent with the assumptions and requirements of the applicable TMDL.

4961 4. Each local TMDL action plan developed by the permittee shall include the following:

4962 a. The TMDL project name;  
 4963 b. The EPA approval date of the TMDL;  
 4964 c. The wasteload allocated to the permittee (individually or in aggregate), and the  
 4965 corresponding percent reduction, if applicable;  
 4966 d. Identification of the significant sources of the pollutants of concern discharging to  
 4967 the permittee's MS4 that are not covered under a separate VPDES permit. For the  
 4968 purposes of this requirement, a significant source of pollutants of concern means a  
 4969 discharge where the expected pollutant loading is greater than the average pollutant  
 4970 loading for the land use identified in the TMDL;  
 4971 e. The BMPs designed to reduce the pollutants of concern in accordance with Part II  
 4972 B 5, B 6, B 7, and B 8;  
 4973 f. Any calculations required in accordance with Part II B 5, B 6, B 7, or B 8;  
 4974 g. For action plans developed in accordance with Part II B 5, B 6, and B 8, an outreach  
 4975 strategy to enhance the public's education (including employees) on methods to  
 4976 eliminate and reduce discharges of the pollutants; and  
 4977 h. A schedule of anticipated actions planned for implementation during this permit  
 4978 term.

4979 5. Bacterial TMDLs.

4980 a. Traditional permittees shall select and implement at least three of the strategies  
 4981 listed in Table 5 designed to reduce the load of bacteria to the MS4. Selection of the  
 4982 strategies shall correspond to sources identified in Part II B 4 d.  
 4983 b. Nontraditional permittees shall select at least one strategy listed in Table 5 designed  
 4984 to reduce the load of bacteria to the MS4 relevant to sources of bacteria applicable  
 4985 within the MS4 regulated service area. Selection of the strategies shall correspond to  
 4986 sources identified in Part II B 4 d.

Table 5	
Strategies for Bacteria Reduction Stormwater Control/Management Strat	
Source	Strategies (provided as an example and not meant to b

Domestic pets (dogs and cats)	<p>Provide signage to pick up dog waste, providing pet waste bags and disposal instructions.</p> <p>Adopt and enforce pet waste ordinances or policies, or leash laws or policies.</p> <p>Place dog parks away from environmentally sensitive areas.</p> <p>Maintain dog parks by removing disposed of pet waste bags and cleaning up.</p> <p>Protect riparian buffers and provide unmanicured vegetative buffers along riparian areas.</p>
Urban wildlife	<p>Educate the public on how to reduce food sources accessible to urban wildlife (e.g., clean up dumpsters and grease traps, residential garbage, feed pets indoors).</p> <p>Install storm drain inlet or outlet controls.</p> <p>Clean out storm drains to remove waste from wildlife.</p> <p>Implement and enforce urban trash management practices.</p> <p>Implement rooftop disconnection programs or site designs that minimize rooftop runoff.</p> <p>Implement a program for removing animal carcasses from roadways and other areas (e.g., through proper storage or through transport to a licensed facility).</p>
Illicit connections or illicit discharges to the MS4	<p>Implement an enhanced dry weather screening and illicit discharge, detection and removal program in accordance with the requirements of Part I E 3 to identify and remove illicit connections and discharges that are infiltrating to the MS4 and implement repairs.</p> <p>Implement a program to identify potentially failing septic systems.</p> <p>Educate the public on how to determine whether their septic system is failing.</p> <p>Implement septic tank inspection and maintenance program.</p> <p>Implement an educational program beyond any requirements in Part I E 3 to educate the public that they should not dump materials into the MS4.</p>
Dry weather urban flows (irrigations, car washing, powerwashing, etc.)	<p>Implement public education programs to reduce dry weather flows from irrigation practices, car washing, powerwashing and other nonstormwater sources.</p> <p>Provide irrigation controller rebates.</p> <p>Implement and enforce ordinances or policies related to outdoor water use.</p> <p>Inspect commercial trash areas, grease traps, washdown practices, and other sources.</p>
Birds (Canadian geese, gulls, pigeons, etc.)	<p>Identify areas with high bird populations and evaluate deterrents, population control, and other measures that may reduce bird-associated bacteria loading.</p> <p>Prohibit feeding of birds.</p>
Other sources	<p>Enhance maintenance of stormwater management facilities owned or operated by the permittee.</p> <p>Enhance requirements for third parties to maintain stormwater management facilities.</p> <p>Develop BMPs for locating, transporting, and maintaining portable toilets.</p> <p>Educate third parties that use portable toilets on BMPs for use.</p> <p>Provide public education on appropriate recreational vehicle dumping practices.</p>

- 4987 6. Local sediment, phosphorus, and nitrogen TMDLs.
- 4988 a. The permittee shall reduce the loads associated with sediment, phosphorus, or
- 4989 nitrogen through implementation of one or more of the following:
- 4990 (1) One or more of the BMPs from the Virginia Stormwater BMP Clearinghouse listed
- 4991 in 9VAC25-870-65 9VAC25-875-590 or other approved BMPs found ~~on~~ through the
- 4992 Virginia Stormwater BMP Clearinghouse ~~website~~;

4993 (2) One or more BMPs approved by the Chesapeake Bay Program. Pollutant load  
4994 reductions generated by annual practices, such as street and storm drain cleaning,  
4995 shall only be applied to the compliance year in which the annual practice was  
4996 implemented; or

4997 (3) Land disturbance thresholds lower than Virginia's regulatory requirements for  
4998 erosion and sediment control and post development stormwater management.

4999 b. The permittee may meet the local TMDL requirements for sediment, phosphorus,  
5000 or nitrogen through BMPs implemented or sediment, phosphorus, or nitrogen credits  
5001 acquired. BMPs implemented and nutrient and sediment credits acquired to meet the  
5002 requirements of the Chesapeake Bay TMDL in Part II A may also be utilized to meet  
5003 local TMDL requirements as long as the BMPs are implemented or the credits are  
5004 generated in the watershed for which local water quality is impaired.

5005 c. The permittee shall calculate the anticipated load reduction achieved from each  
5006 BMP and include the calculations in the action plan required in Part II B 4 f.

5007 d. No later than 36 months after the effective date of this permit, the permittee shall  
5008 submit to the department an update on the progress made toward achieving local  
5009 TMDL action plan goals and the anticipated end dates by which the permittee will meet  
5010 each wasteload allocation for sediment, phosphorus, or nitrogen. The proposed end  
5011 date may be developed in accordance with Part II B 3.

5012 7. Polychlorinated biphenyl (PCB) TMDLs.

5013 a. For each PCB TMDL action plan, the permittee shall include an inventory of  
5014 potentially significant sources of PCBs owned or operated by the permittee that drains  
5015 to the MS4 that includes the following information:

5016 (1) Location of the potential source;

5017 (2) Whether or not the potential source is from current site activities or activities  
5018 previously conducted at the site that have been terminated (i.e., legacy activities); and

5019 (3) A description of any measures being implemented or to be implemented to prevent  
5020 exposure to stormwater and the discharge of PCBs from the site.

5021 b. If at any time during the term of this permit, the permittee discovers a previously  
5022 unidentified significant source of PCBs within the permittee's MS4 regulated service  
5023 area, the permittee shall notify DEQ in writing within 30 days of discovery.

5024 c. As part of its annual reporting requirements, the permittee shall submit results of  
5025 any action plan PCB monitoring or product testing conducted and any adaptive  
5026 management strategies that have been incorporated into the updated action plan  
5027 based upon monitoring or product testing results if the permittee has elected to perform  
5028 monitoring or product testing or both.

5029 8. Chloride TMDLs.

5030 a. No later than 36 months after the permit effective date, permittees shall develop an  
5031 anti-icing and deicing agent education and outreach strategy that identifies target  
5032 audiences for increasing awareness of anti-icing and deicing agent application impacts  
5033 on receiving waters and encourages implementation of enhanced BMPs for  
5034 application, handling, and storage of anti-icing and de-icing agents used for snow and  
5035 ice management.

5036 b. Anti-icing and deicing agent education and outreach strategies shall contain a  
5037 schedule to implement two or more of the strategies listed in Part I E 1 d Table 1 per  
5038 year to communicate to target audiences the importance of responsible anti-icing and  
5039 deicing agent application, transport, and storage.

5040 c. No later than 36 months after permit issuance, the permittee shall review good  
5041 housekeeping procedures for anti-icing and deicing agent application, handling,  
5042 storage, and transport activities required under Part I E 6 b (1) (a) and identify a  
5043 minimum of two strategies for implementing enhanced BMPs that promote efficient  
5044 management and application of anti-icing and deicing agents while maintaining public  
5045 safety.

5046 9. Prior to submittal of the action plan required in Part II B 2, the permittee shall provide  
5047 an opportunity for public comment for no fewer than 15 days on the proposal to meet the  
5048 local TMDL action plan requirements .

5049 10. The MS4 program plan as required by Part I B of this permit shall incorporate each  
5050 local TMDL action plan. Local TMDL action plans may be incorporated by reference into  
5051 the MS4 program plan provided that the program plan includes the date of the most recent  
5052 local TMDL action plan and identification of the location where a copy of the local TMDL  
5053 action plan may be obtained.

5054 11. For each reporting period, each annual report shall include a summary of actions  
5055 conducted to implement each local TMDL action plan.

5056 C. Inspection and maintenance of ecosystem restoration projects used for TMDL compliance.

5057 1. Within 36 months of permit issuance the permittee shall develop and maintain written  
5058 inspection and maintenance procedures in order to ensure adequate long-term operation  
5059 and maintenance of ecosystem restoration projects as defined in 9VAC25-890-1 and  
5060 implemented as part of a TMDL action plan developed in accordance with Part II A, B, or  
5061 both. The permittee may utilize inspection and maintenance protocols developed by the  
5062 Chesapeake Bay Program or inspection and maintenance plans developed in accordance  
5063 with the department's Stormwater Local Assistance Fund (SLAF) guidelines.

5064 2. The permittee shall inspect ecosystem restoration projects owned or operated by the  
5065 permittee and implemented as part of a current TMDL action plan developed in  
5066 accordance with Part II A or B no less than once every 60 months.

### 5067 Part III

#### 5068 DEQ BMP Warehouse Reporting

5069 A. For the purpose of Part III of this permit, "best management practice" or "BMP" means a  
5070 practice that achieves quantifiable nitrogen, phosphorus, or total suspended solids reductions,  
5071 including stormwater management facilities, ecosystem restoration projects, annual practices,  
5072 and other practices approved by the department for reducing nitrogen, phosphorus, and total  
5073 suspended solids pollutants.

5074 B. No later than October 1 of each year the permittee shall electronically report new BMPs  
5075 implemented and inspected as applicable between July 1 and June 30 of each year using the  
5076 DEQ BMP Warehouse.

5077 1. The permittee shall use the associated reporting template for stormwater  
5078 management facilities not reported in accordance with Part III B 5 , including stormwater  
5079 management facilities installed to control post-development stormwater runoff from land  
5080 disturbing activities less than one acre in accordance with the Chesapeake Bay  
5081 Preservation Area Designation and Management Regulations (9VAC25-830), if  
5082 applicable, and for which a General VPDES Permit for Discharges of Stormwater from  
5083 Construction Activities was not required.

5084 2. The permittee shall use the DEQ BMP Warehouse to report BMPs that were not  
5085 reported in accordance with Part III B 1 or B 5 and were implemented as part of a TMDL  
5086 action plan to achieve nitrogen, phosphorus, and total suspended solids reductions in  
5087 accordance with Part II A or B.

5088 3. The permittee shall use the DEQ BMP Warehouse to report any BMPs that were not  
5089 reported in accordance with Part III B 1, B 2, or B 5.

5090 4. The permittee shall use the DEQ BMP Warehouse to report the most recent  
5091 inspection date for BMPs in accordance with Part I E 5 b or 5 c, or in accordance with  
5092 Part II C and the most recent associated TMDL action plan.

5093 5. Traditional permittees specified in Part I E 5 a (1) shall use the DEQ Construction  
5094 Stormwater Database or other application as specified by the department to report each  
5095 stormwater management facility installed after July 1, 2014, to address the control of  
5096 post-construction runoff from land disturbing activities for which the permittee is required  
5097 to obtain a General VPDES Permit for Discharges of Stormwater from Construction  
5098 Activities.

5099 C. The following information for each new BMP reported in accordance with Part III B 1, B 2,  
5100 B 3, or B 5 shall be reported to the DEQ BMP Warehouse as applicable:

5101 1. The BMP type;

5102 2. The BMP location as decimal degree latitude and longitude;

5103 3. The acres treated by the BMP, including total acres and impervious acres;

5104 4. The date the BMP was brought online (MM/YYYY). If the date brought online is not  
5105 known, the permittee shall use 06/2005;

5106 5. The 6th Order Hydrologic Unit Code in which the BMP is located;

5107 6. Whether the BMP is owned or operated by the permittee or privately owned;

5108 7. Whether or not the BMP is part of the permittee's Chesapeake Bay TMDL action plan  
5109 required in Part II A or local TMDL action plan required in Part II B, or both;

5110 8. If the BMP is privately owned, whether a maintenance agreement exists;

5111 9. The date of the permittee's most recent inspection of the BMP; and

5112 10. Any other information specific to the BMP type required by the DEQ BMP Warehouse  
5113 (e.g., linear feet of stream restoration).

5114 D. No later than October 1 of each year, the permittee shall electronically report the most  
5115 recent inspection date for any existing BMP that was previously reported and re-inspected  
5116 between July 1 and June 30 using the BMP Warehouse. If an existing BMP has not been  
5117 previously reported, the BMP shall be reported as new in accordance with Part III B and Part III  
5118 C. No later than October 1 of each year the DEQ BMP Warehouse shall be updated if an  
5119 existing BMP is discovered between July 1 and June 30 that was not previously reported to the  
5120 DEQ BMP Warehouse.

5121 E. No later than October 1 of each year the DEQ BMP Warehouse shall be updated if an  
5122 existing BMP is discovered between July 1 and June 30 that was not previously reported to the  
5123 DEQ BMP Warehouse.

#### 5124 Part IV

#### 5125 Conditions Applicable to All State and VPDES Permits

5126 NOTE: Discharge monitoring is not required for compliance purposes by this general permit.  
5127 If the operator chooses to monitor stormwater discharges for informational or screening purposes,  
5128 the operator does not need to comply with the requirements of Part IV A, B, or C.

#### 5129 A. Monitoring.

5130 1. Samples and measurements taken for the purpose of monitoring shall be representative  
5131 of the monitoring activity.

5132 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part  
5133 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless

5134 other procedures have been specified in this state permit. Analyses performed according  
5135 to test procedures approved under 40 CFR Part 136 shall be performed by an  
5136 environmental laboratory certified under regulations adopted by the Department of  
5137 General Services (1VAC30-45 or 1VAC30-46).

5138 3. The operator shall periodically calibrate and perform maintenance procedures on all  
5139 monitoring and analytical instrumentation at intervals that will ensure accuracy of  
5140 measurements.

5141 B. Records.

5142 1. Monitoring records and reports shall include:

5143 a. The date, exact place, and time of sampling or measurements;

5144 b. The individuals who performed the sampling or measurements;

5145 c. The dates and times analyses were performed;

5146 d. The individuals who performed the analyses;

5147 e. The analytical techniques or methods used; and

5148 f. The results of such analyses.

5149 2. The operator shall retain records of all monitoring information, including all calibration  
5150 and maintenance records and all original strip chart recordings for continuous monitoring  
5151 instrumentation, copies of all reports required by this state permit, and records of all data  
5152 used to complete the registration statement for this state permit, for a period of at least  
5153 three years from the date of the sample, measurement, report, or request for coverage.  
5154 This period of retention shall be extended automatically during the course of any  
5155 unresolved litigation regarding the regulated activity or regarding control standards  
5156 applicable to the operator, or as requested by the department.

5157 C. Reporting monitoring results.

5158 1. The operator shall submit the results of the monitoring as may be performed in  
5159 accordance with this state permit with the annual report unless another reporting schedule  
5160 is specified elsewhere in this state permit.

5161 2. Monitoring results shall be reported on a discharge monitoring report (DMR); on forms  
5162 provided, approved, or specified by the department; or in any format provided that the  
5163 date, location, parameter, method, and result of the monitoring activity are included.  
5164 Following notification from the department of the start date for the required electronic  
5165 submission of monitoring reports, as provided for in 9VAC25-31-1020, such forms and  
5166 reports submitted after that date shall be electronically submitted to the department in  
5167 compliance with 9VAC25-31-1020 and this section. There shall be at least a three-month  
5168 notice provided between the notification from the department and the date after which  
5169 such forms and reports must be submitted electronically.

5170 3. If the operator monitors any pollutant specifically addressed by this state permit more  
5171 frequently than required by this state permit using test procedures approved under 40 CFR  
5172 Part 136 or using other test procedures approved by the U.S. Environmental Protection  
5173 Agency or using procedures specified in this state permit, the results of this monitoring  
5174 shall be included in the calculation and reporting of the data submitted in the DMR or  
5175 reporting form specified by the department.

5176 4. Calculations for all limitations that require averaging of measurements shall utilize an  
5177 arithmetic mean unless otherwise specified in this state permit.

5178 D. Duty to provide information. The operator shall furnish within a reasonable time, any  
5179 information that the department may request to determine whether cause exists for modifying,  
5180 revoking and reissuing, or terminating this state permit or to determine compliance with this state

5181 permit. The department or EPA may require the operator to furnish, upon request, such plans,  
5182 specifications, and other pertinent information as may be necessary to determine the effect of the  
5183 wastes from the permittee's discharge on the quality of surface waters, or such other information  
5184 as may be necessary to accomplish the purposes of the CWA and Virginia Erosion and  
5185 Stormwater Management Act. The operator shall also furnish to the department or EPA upon  
5186 request, copies of records required to be kept by this state permit.

5187 E. Compliance schedule reports. Reports of compliance or noncompliance with, or any  
5188 progress reports on, interim and final requirements contained in any compliance schedule of this  
5189 state permit shall be submitted no later than 14 days following each schedule date.

5190 F. Unauthorized stormwater discharges. Pursuant to § 62.1-44.5 of the Code of Virginia,  
5191 except in compliance with a state permit issued by the department, it shall be unlawful to cause  
5192 a stormwater discharge from a MS4.

5193 G. Reports of unauthorized discharges. Any operator of a MS4 who discharges or causes or  
5194 allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious  
5195 substance or a hazardous substance or oil in an amount equal to or in excess of a reportable  
5196 quantity established under either 40 CFR Part 110, 40 CFR Part 117, 40 CFR Part 302, or § 62.1-  
5197 44.34:19 of the Code of Virginia that occurs during a 24-hour period into or upon surface waters  
5198 or who discharges or causes or allows a discharge that may reasonably be expected to enter  
5199 surface waters shall notify the department of the discharge immediately (see Part IV I 4) upon  
5200 discovery of the discharge, but in no case later than within 24 hours after said discovery. A written  
5201 report of the unauthorized discharge shall be submitted to the department within five days of  
5202 discovery of the discharge. The written report shall contain:

- 5203 1. A description of the nature and location of the discharge;
- 5204 2. The cause of the discharge;
- 5205 3. The date on which the discharge occurred;
- 5206 4. The length of time that the discharge continued;
- 5207 5. The volume of the discharge;
- 5208 6. If the discharge is continuing, how long it is expected to continue;
- 5209 7. If the discharge is continuing, what the expected total volume of the discharge will be;
- 5210 and
- 5211 8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present
- 5212 discharge or any future discharges not authorized by this state permit.

5213 Discharges reportable to the department under the immediate reporting requirements of other  
5214 regulations are exempted from this requirement.

5215 H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge,  
5216 including a bypass in Part IV U or an upset in Part IV V, should occur from a facility and the  
5217 discharge enters or could be expected to enter surface waters, the operator shall promptly notify  
5218 (see Part IV I 4), in no case later than within 24 hours, the department after the discovery of the  
5219 discharge. This notification shall provide all available details of the incident, including any adverse  
5220 effects on aquatic life and the known number of fish killed. The operator shall reduce the report  
5221 to writing and shall submit it to the department within five days of discovery of the discharge in  
5222 accordance with Part IV I 2. Unusual and extraordinary discharges include any discharge resulting  
5223 from:

- 5224 1. Unusual spillage of materials resulting directly or indirectly from processing operations;
- 5225 2. Breakdown of processing or accessory equipment;
- 5226 3. Failure or taking out of service some or all of the facilities; and
- 5227 4. Flooding or other acts of nature.

- 5228 I. Reports of noncompliance.
- 5229 1. The operator shall report any noncompliance that may adversely affect surface waters
- 5230 or may endanger public health.
- 5231 a. A report to the department shall be provided within 24 hours from the time the
- 5232 operator becomes aware of the circumstances. The following shall be included as
- 5233 information that shall be reported within 24 hours under Part IV I:
- 5234 (1) Any unanticipated bypass; and
- 5235 (2) Any upset that causes a discharge to surface waters.
- 5236 b. A written report shall be submitted within five days and shall contain:
- 5237 (1) A description of the noncompliance and its cause;
- 5238 (2) The period of noncompliance, including exact dates and times, and if the
- 5239 noncompliance has not been corrected, the anticipated time it is expected to continue;
- 5240 and
- 5241 (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the
- 5242 noncompliance. The department may waive the written report on a case-by-case basis
- 5243 for reports of noncompliance under Part IV I if the report has been received within 24
- 5244 hours and no adverse impact on surface waters has been reported.
- 5245 2. The operator shall report all instances of noncompliance not reported under Part IV I 1
- 5246 b, in writing, as part of the annual reports that are submitted. The reports shall contain the
- 5247 information listed in Part IV I 2.
- 5248 3. The immediate (within 24 hours) reports required in Part IV G, H, and I shall be made
- 5249 to the department. Reports may be made by telephone, email , or online at
- 5250 [https://www.deq.virginia.gov/our-programs/pollution-response/pollution-data-and-](https://www.deq.virginia.gov/our-programs/pollution-response/pollution-data-and-reporting)
- 5251 [reporting](https://www.deq.virginia.gov/our-programs/pollution-response/pollution-data-and-reporting). For reports outside normal working hours, the online portal shall be used. For
- 5252 emergencies, call the Virginia Department of Emergency Management's Emergency
- 5253 Operations Center (24-hours) at 1-800-468-8892.
- 5254 4. Where the operator becomes aware of a failure to submit any relevant facts, or submittal
- 5255 of incorrect information in any report, including a registrations statement, to the
- 5256 department, the operator shall promptly submit such facts or correct information.
- 5257 J. Notice of planned changes.
- 5258 1. The operator shall give notice to the department as soon as possible of any planned
- 5259 physical alterations or additions to the permitted facility. Notice is required only when:
- 5260 a. The operator plans an alteration or addition to any building, structure, facility, or
- 5261 installation that may meet one of the criteria for determining whether a facility is a new
- 5262 source in ~~9VAC25-870-420~~ 9VAC25-875-990:
- 5263 b. The operator plans an alteration or addition that would significantly change the
- 5264 nature or increase the quantity of pollutants discharged. This notification applies to
- 5265 pollutants that are not subject to effluent limitations in this state permit; or
- 5266 2. The operator shall give advance notice to the department of any planned changes in
- 5267 the permitted facility or activity that may result in noncompliance with state permit
- 5268 requirements.
- 5269 K. Signatory requirements.
- 5270 1. Registration statement. All registration statements shall be signed as follows:
- 5271 a. For a corporation: by a responsible corporate officer. For the purpose of this chapter,
- 5272 a responsible corporate officer means: (i) a president, secretary, treasurer, or vice-
- 5273 president of the corporation in charge of a principal business function, or any other

5274 person who performs similar policy-making or decision-making functions for the  
5275 corporation, or (ii) the manager of one or more manufacturing, production, or operating  
5276 facilities, provided the manager is authorized to make management decisions that  
5277 govern the operation of the regulated facility including having the explicit or implicit  
5278 duty of making major capital investment recommendations, and initiating and directing  
5279 other comprehensive measures to assure long term compliance with environmental  
5280 laws and regulations; the manager can ensure that the necessary systems are  
5281 established or actions taken to gather complete and accurate information for state  
5282 permit application requirements; and where authority to sign documents has been  
5283 assigned or delegated to the manager in accordance with corporate procedures;

5284 b. For a partnership or sole proprietorship: by a general partner or the proprietor,  
5285 respectively; or

5286 c. For a municipality, state, federal, or other public agency: by either a principal  
5287 executive officer or ranking elected official. For purposes of this chapter, a principal  
5288 executive officer of a public agency includes:

5289 (1) The chief executive officer of the agency, or  
5290 (2) A senior executive officer having responsibility for the overall operations of a  
5291 principal geographic unit of the agency.

5292 2. Reports and other information. All reports required by state permits, including annual  
5293 reports, and other information requested by the department shall be signed by a person  
5294 described in Part IV K 1, or by a duly authorized representative of that person. A person  
5295 is a duly authorized representative only if:

5296 a. The authorization is made in writing by a person described in Part IV K 1;  
5297 b. The authorization specifies either an individual or a position having responsibility for  
5298 the overall operation of the regulated facility or activity such as the position of plant  
5299 manager, operator of a well or a well field, superintendent, position of equivalent  
5300 responsibility, or an individual or position having overall responsibility for  
5301 environmental matters for the operator. (A duly authorized representative may thus be  
5302 either a named individual or any individual occupying a named position.); and  
5303 c. The signed and dated written authorization is submitted to the department.

5304 3. Changes to authorization. If an authorization under Part IV K 2 is no longer accurate  
5305 because a different individual or position has responsibility for the overall operation of the  
5306 MS4, a new authorization satisfying the requirements of Part IV K 2 shall be submitted to  
5307 the department prior to or together with any reports, or information to be signed by an  
5308 authorized representative.

5309 4. Certification. Any person signing a document under Part IV K 1 or K 2 shall make the  
5310 following certification:

5311 "I certify under penalty of law that this document and all attachments were prepared under  
5312 my direction or supervision in accordance with a system designed to assure that qualified  
5313 personnel properly gather and evaluate the information submitted. Based on my inquiry of  
5314 the person or persons who manage the system, or those persons directly responsible for  
5315 gathering the information, the information submitted is, to the best of my knowledge and  
5316 belief, true, accurate, and complete. I am aware that there are significant penalties for  
5317 submitting false information, including the possibility of fine and imprisonment for knowing  
5318 violations."

5319 L. Duty to comply. The operator shall comply with all conditions of this state permit. Any state  
5320 permit noncompliance constitutes a violation of the Virginia Erosion and Stormwater Management  
5321 Act and the Clean Water Act, except that noncompliance with certain provisions of this state

5322 permit may constitute a violation of the Virginia Erosion and Stormwater Management Act but not  
5323 the Clean Water Act. Permit noncompliance is grounds for enforcement action; for state permit  
5324 termination, revocation and reissuance, or modification; or denial of a state permit renewal  
5325 application.

5326 The operator shall comply with effluent standards or prohibitions established under § 307(a)  
5327 of the Clean Water Act for toxic pollutants within the time provided in the regulations that establish  
5328 these standards or prohibitions or standards for sewage sludge use or disposal, even if this state  
5329 permit has not yet been modified to incorporate the requirement.

5330 M. Duty to reapply. If the operator wishes to continue an activity regulated by this state permit  
5331 after the expiration date of this state permit, the operator shall submit a new registration statement  
5332 at least 90 days before the expiration date of the existing state permit, unless permission for a  
5333 later date has been granted by the department. The department shall not grant permission for  
5334 registration statements to be submitted later than the expiration date of the existing state permit.

5335 N. Effect of a state permit. This state permit does not convey any property rights in either real  
5336 or personal property or any exclusive privileges, nor does it authorize any injury to private property  
5337 or invasion of personal rights, or any infringement of federal, state or local law or regulations.

5338 O. State law. Nothing in this state permit shall be construed to preclude the institution of any  
5339 legal action under, or relieve the operator from any responsibilities, liabilities, or penalties  
5340 established pursuant to any other state law or regulation or under authority preserved by § 510 of  
5341 the Clean Water Act. Except as provided in state permit conditions on bypassing in Part IV U and  
5342 upset in Part IV V nothing in this state permit shall be construed to relieve the operator from civil  
5343 and criminal penalties for noncompliance.

5344 P. Oil and hazardous substance liability. Nothing in this state permit shall be construed to  
5345 preclude the institution of any legal action or relieve the operator from any responsibilities,  
5346 liabilities, or penalties to which the operator is or may be subject under §§ 62.1-44.34:14 through  
5347 62.1-44.34:23 of the State Water Control Law or § 311 of the Clean Water Act.

5348 Q. Proper operation and maintenance. The operator shall at all times properly operate and  
5349 maintain all facilities and systems of treatment and control (and related appurtenances), which  
5350 are installed or used by the operator to achieve compliance with the conditions of this state permit.  
5351 Proper operation and maintenance also includes effective plant performance, adequate funding,  
5352 adequate staffing, and adequate laboratory and process controls, including appropriate quality  
5353 assurance procedures. This provision requires the operation of back-up or auxiliary facilities or  
5354 similar systems, which are installed by the operator only when the operation is necessary to  
5355 achieve compliance with the conditions of this state permit.

5356 R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course of  
5357 treatment or management of pollutants shall be disposed of in a manner so as to prevent any  
5358 pollutant from such materials from entering surface waters and in compliance with all applicable  
5359 state and federal laws and regulations.

5360 S. Duty to mitigate. The operator shall take all reasonable steps to minimize or prevent any  
5361 discharge in violation of this state permit that has a reasonable likelihood of adversely affecting  
5362 human health or the environment.

5363 T. Need to halt or reduce activity not a defense. It shall not be a defense for an operator in an  
5364 enforcement action that it would have been necessary to halt or reduce the permitted activity in  
5365 order to maintain compliance with the conditions of this state permit.

5366 U. Bypass.

5367 1. "Bypass," as defined in ~~9VAC25-870-10~~ 9VAC25-875-850, means the intentional  
5368 diversion of waste streams from any portion of a treatment facility. The operator may allow  
5369 any bypass to occur that does not cause effluent limitations to be exceeded, but only if it

5370 also is for essential maintenance to ensure efficient operation. These bypasses are not  
5371 subject to the provisions of Part IV U 2 and U 3.

5372 2. Notice.

5373 a. Anticipated bypass. If the operator knows in advance of the need for a bypass, the  
5374 operator shall submit prior notice to the department, if possible at least 10 days before  
5375 the date of the bypass.

5376 b. Unanticipated bypass. The operator shall submit notice of an unanticipated bypass  
5377 as required in Part IV I.

5378 3. Prohibition of bypass.

5379 a. Except as provided in Part IV U 1, bypass is prohibited, and the department may  
5380 take enforcement action against an operator for bypass, unless:

5381 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property  
5382 damage;

5383 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary  
5384 treatment facilities, retention of untreated wastes, or maintenance during normal  
5385 periods of equipment downtime. This condition is not satisfied if adequate back-up  
5386 equipment should have been installed in the exercise of reasonable engineering  
5387 judgment to prevent a bypass that occurred during normal periods of equipment  
5388 downtime or preventive maintenance; and

5389 (3) The operator submitted notices as required under Part IV U 2.

5390 b. The department may approve an anticipated bypass, after considering its adverse  
5391 effects, if the department determines that it will meet the three conditions listed in Part  
5392 IV U 3 a.

5393 V. Upset.

5394 1. An "upset," as defined in ~~9VAC25-870-10~~ 9VAC25-875-850, means an exceptional  
5395 incident in which there is unintentional and temporary noncompliance with technology  
5396 based state permit effluent limitations because of factors beyond the reasonable control  
5397 of the operator. An upset does not include noncompliance to the extent caused by  
5398 operational error, improperly designed treatment facilities, inadequate treatment facilities,  
5399 lack of preventive maintenance, or careless or improper operation.

5400 2. An upset constitutes an affirmative defense to an action brought for noncompliance with  
5401 technology-based state permit effluent limitations if the requirements of Part IV V 4 are  
5402 met. A determination made during administrative review of claims that noncompliance was  
5403 caused by upset, and before an action for noncompliance, is not a final administrative  
5404 action subject to judicial review.

5405 3. An upset does not include noncompliance to the extent caused by operational error,  
5406 improperly designed treatment facilities, inadequate treatment facilities, lack of preventive  
5407 maintenance, or careless or improper operation.

5408 4. An operator who wishes to establish the affirmative defense of upset shall demonstrate,  
5409 through properly signed, contemporaneous operating logs, or other relevant evidence  
5410 that:

5411 a. An upset occurred and that the operator can identify the causes of the upset;

5412 b. The permitted facility was at the time being properly operated;

5413 c. The operator submitted notice of the upset as required in Part IV I; and

5414 d. The operator complied with any remedial measures required under Part IV S.

5415 5. In any enforcement proceeding the operator seeking to establish the occurrence of an  
5416 upset has the burden of proof.

5417 W. Inspection and entry. The operator shall allow the department , EPA, or an authorized  
5418 representative (including an authorized contractor), upon presentation of credentials and other  
5419 documents as may be required by law, to:

5420 1. Enter upon the operator's premises where a regulated facility or activity is located or  
5421 conducted, or where records must be kept under the conditions of this state permit;

5422 2. Have access to and copy, at reasonable times, any records that must be kept under the  
5423 conditions of this state permit;

5424 3. Inspect and photograph at reasonable times any facilities, equipment (including  
5425 monitoring and control equipment), practices, or operations regulated or required under  
5426 this state permit; and

5427 4. Sample or monitor at reasonable times, for the purposes of ensuring permit compliance  
5428 or as otherwise authorized by the Clean Water Act and the Virginia Erosion and  
5429 Stormwater Management Act, any substances or parameters at any location.

5430 For purposes of this subsection, the time for inspection shall be deemed reasonable during  
5431 regular business hours, and whenever the facility is discharging. Nothing contained herein  
5432 shall make an inspection unreasonable during an emergency.

5433 X. State permit actions. State permits may be modified, revoked and reissued, or terminated  
5434 for cause. The filing of a request by the operator for a state permit modification, revocation and  
5435 reissuance, or termination, or a notification of planned changes or anticipated noncompliance  
5436 does not stay any state permit condition.

5437 Y. Transfer of state permits.

5438 1. State permits are not transferable to any person except after notice to the department.  
5439 Except as provided in Part IV Y 2, a state permit may be transferred by the operator to a  
5440 new operator only if the state permit has been modified or revoked and reissued, or a  
5441 minor modification made, to identify the new operator and incorporate such other  
5442 requirements as may be necessary under the Virginia Erosion and Stormwater  
5443 Management Act and the Clean Water Act.

5444 2. As an alternative to transfers under Part IV Y 1, this state permit may be automatically  
5445 transferred to a new operator if:

5446 a. The current operator notifies the department at least 30 days in advance of the  
5447 proposed transfer of the title to the facility or property;

5448 b. The notice includes a written agreement between the existing and new operators  
5449 containing a specific date for transfer of state permit responsibility, coverage, and  
5450 liability between them; and

5451 c. The department does not notify the existing operator and the proposed new operator  
5452 of its intent to modify or revoke and reissue the state permit. If this notice is not  
5453 received, the transfer is effective on the date specified in the agreement mentioned in  
5454 Part IV Y 2 b.

5455 Z. Severability. The provisions of this state permit are severable, and if any provision of this  
5456 state permit or the application of any provision of this state permit to any circumstance is held  
5457 invalid, the application of such provision to other circumstances, and the remainder of this state  
5458 permit, shall not be affected thereby.

5459 **9VAC25-900-10. Definitions.**

5460 The following words and terms when used in this chapter shall have the following meanings  
5461 unless the context clearly indicates otherwise:

5462 "300 animal units" means the term as defined in 9VAC25-192-10.

5463 "Act" means the Chesapeake Bay Watershed Nutrient Credit Exchange Program, Article 4.02  
5464 (§ 62.1-44.19:12 et seq.) of Chapter 3.1 of Title 62.1 of the Code of Virginia.

5465 "Animal feeding operation" means the term as defined by 9VAC25-31-10.

5466 "Applicant" means the person who submits an application to the department for nutrient credit  
5467 certification pursuant to this chapter.

5468 "Bankfull event" means the storm event that corresponds with the stream stage at its incipient  
5469 point of flooding. The bankfull discharge associated with the bankfull event is the flow that  
5470 transports the majority of a stream's sediment load over time and thereby forms and maintains  
5471 the channel dimension, pattern, and profile.

5472 "Baseline" means the practices, actions, or levels of reductions that must be in place before  
5473 credits can be generated. The best management practices to be implemented for achieving  
5474 baseline are provided in 9VAC25-900-100.

5475 "Best management practice," "practice," or "BMP" means a structural practice, nonstructural  
5476 practice, or other management practice used to prevent or reduce nutrient loads reaching surface  
5477 waters or the adverse effects thereof.

5478 "Board" means the State Water Control Board. When used outside the context of the  
5479 promulgation of regulations, including regulations to establish general permits, "Board" means the  
5480 Department of Environmental Quality.

5481 "Certification of nutrient credits" or "nutrient credit certification" means the approval of nutrient  
5482 credits issued by the department as specified in 9VAC25-900-80. Nutrient credit certification does  
5483 not include the certification of point source credits generated by point sources regulated under  
5484 the Watershed General Virginia Pollutant Discharge Elimination System Permit issued pursuant  
5485 to § 62.1-44.19:14 of the State Water Control Law.

5486 "Chesapeake Bay Watershed" means the land areas draining to the following Virginia river  
5487 basins: the Potomac River Basin, the James River Basin, the Rappahannock River Basin, the  
5488 Chesapeake Bay and small coastal basins, or the York River Basin.

5489 "Concentrated animal feeding operation" means the term as defined by 9VAC25-31-10.

5490 "Cropland" means land that is used for the production of grain, oilseeds, silage or industrial  
5491 crops not defined as hay or pasture.

5492 "DCR" means the Department of Conservation and Recreation.

5493 "Delivery factor" means the estimated percentage of a total nitrogen or total phosphorus load  
5494 delivered to tidal waters as determined by the specific geographic location of the nutrient source.  
5495 For point source discharges the delivery factor accounts for attenuation that occurs during riverine  
5496 transport between the point of discharge and tidal waters. For nonpoint source loads the delivery  
5497 factor accounts for attenuation that occurs during riverine transport as well as attenuation between  
5498 the nutrient source and the edge of the nearest stream. Delivery factors values shall be as  
5499 specified by the department. In the Chesapeake Bay Watershed, the Chesapeake Bay Program  
5500 Partnership's approved delivery factors shall be used.

5501 "Department" means the Department of Environmental Quality.

5502 "Director" means the Director of the Department of Environmental Quality or his designee.

5503 "Exchange" means the transaction in which a person acquires released nutrient credits  
5504 produced by a nutrient credit-generating project.

5505 "Field office technical guide" or "FOTG" means technical guides about conservation of soil,  
5506 water, air, and related plant and animal resources and are the primary scientific reference for the  
5507 U.S. Department of Agriculture's Natural Resource Conservation Service. These guides are used

5508 in each field office and are localized so that they apply specifically to the geographic area for  
5509 which they are prepared.

5510 "Hayland" means land that is used to grow a grass, legume, or other plants such as clover or  
5511 alfalfa, which is cut and dried for feed.

5512 "Highly erodible soils" means land that is defined as highly erodible by the Sodbuster,  
5513 Conservation Reserve, and Conservation Compliance parts of the Food Security Act of 1985 (P.L.  
5514 99-198) and the Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624). Lists of  
5515 highly erodible and potential highly erodible map units are maintained in NRCS field office  
5516 technical guide.

5517 "HUC" means the hydrologic unit code.

5518 "Impaired waters" means those waters identified as impaired in the 305(b)/303(d) Water  
5519 Quality Assessment Integrated Report prepared pursuant to § 62.1-44.19:5 of the State Water  
5520 Control Law.

5521 "Implementation plan" means a plan that has been developed to meet the requirements of  
5522 9VAC25-900-120 and is submitted as part of the application.

5523 "Invasive plant species" means non-native plant species that are contained on DCR's Virginia  
5524 Invasive Plant Species List.

5525 "Innovative practice" means practices or BMPs not approved by the Chesapeake Bay  
5526 Program Partnership or the Virginia Stormwater BMP Clearinghouse. Nutrient credits generated  
5527 by innovative practices may only be certified as term credits.

5528 "Landowner" means any person or group of persons acting individually or as a group that  
5529 owns the parcel on which a nutrient credit-generating project is sited including: (i) the  
5530 Commonwealth or any of its political subdivisions, including localities, commissions, and  
5531 authorities; (ii) any public or private institution, corporation, association, firm, or company  
5532 organized or existing under the laws of this or any other state or country; or (iii) any officer or  
5533 agency of the United States.

5534 "Land use controls" means legal measures or instruments that restrict the activity, use, and  
5535 access to property.

5536 "Land use conversion" means a change from a more intensive to less intensive land use  
5537 resulting in nutrient reductions.

5538 "Management area" means all contiguous parcels deeded to the same landowner that  
5539 includes the site of the nutrient credit-generating project within its boundaries. The term  
5540 contiguous means the same or adjacent parcels that may be divided by public or private right-of-  
5541 way. For a public entity that owns or operates an MS4 and generates credits within the MS4  
5542 service area, the management area is the MS4 service area.

5543 "Mitigation" means sequentially avoiding and minimizing impacts to the maximum extent  
5544 practicable and then compensating for remaining unavoidable impacts of a proposed action.

5545 "Mitigation bank" means a site providing off-site, consolidated compensatory mitigation that is  
5546 developed and approved in accordance with all applicable federal and state laws or regulations  
5547 for the establishment, use and operation of mitigation banks and is operating under a signed  
5548 mitigation banking instrument.

5549 "Mitigation banking instrument" means the legal document for the establishment, operation,  
5550 and use of a stream or wetland mitigation bank.

5551 "MS4" means a municipal separate storm sewer system as defined in ~~9VAC25-870-10~~  
5552 9VAC25-875-20.

5553 "MS4 service area" means (i) for Phase I MS4 permittees, the service area delineated in  
5554 accordance with the permit issued pursuant to ~~9VAC25-870-380 A 3~~ 9VAC25-875-950 A; and (ii)  
5555 for Phase II MS4 permittees, the term as described in 9VAC25-890.

5556 "Non-land use conversion" means practices, except for land use conversion, that are used by  
5557 a nutrient credit-generating project to produce nutrient reductions.

5558 "Nonpoint source pollution" or "nonpoint source" means pollution such as sediment, nitrogen,  
5559 phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but  
5560 rather are washed from the land surface in a diffuse manner by stormwater runoff.

5561 "NRCS" mean the U.S. Department of Agriculture's Natural Resource Conservation Service.

5562 "Nutrient credit" or "credit" means a nonpoint source nutrient reduction that is certified  
5563 pursuant to this chapter and expressed in pounds of phosphorus and nitrogen either (i) delivered  
5564 to tidal waters when the credit is generated within the Chesapeake Bay Watershed or (ii) as  
5565 otherwise specified when generated in the Southern Rivers watersheds. Nutrient credit does not  
5566 include point source nitrogen credits or point source phosphorus credits as defined in § 62.1-  
5567 44.19:13 of the Code of Virginia.

5568 "Nutrient credit-generating entity" means an entity that implements practices for the  
5569 generation of nonpoint source nutrient credits.

5570 "Nutrient credit-generating project" or "project" means a project developed to reduce the load  
5571 of nitrogen and phosphorous nonpoint source pollution in order to generate nutrient credits for  
5572 certification pursuant to this chapter.

5573 "Nutrient reductions" means the reduction in the load of nitrogen and phosphorous nonpoint  
5574 source pollution.

5575 "Owner" means the Commonwealth or any of its political subdivisions, including sanitation  
5576 district commissions and authorities and any public or private institution, corporation, association,  
5577 firm, or company organized or existing under the laws of this or any other state or country, or any  
5578 officer or agency of the United States, or any person or group of persons acting individually or as  
5579 a group that owns, operates, charters, rents, or otherwise exercises control over or is responsible  
5580 for any nutrient credit-generating project.

5581 "Pasture" means land that supports the grazing of domesticated animals for forages.

5582 "Performance standards" means the minimum objectives or specifications required of a  
5583 particular management practice by the department in order to assure predicted nutrient reductions  
5584 will be achieved.

5585 "Perpetual nutrient credits" or "perpetual credits" mean credits that are generated by practices  
5586 that result in permanent nutrient reductions from baseline and certified as permanent in  
5587 accordance with this chapter.

5588 "Person" means any individual, corporation, partnership, association, state, municipality,  
5589 commission, or political subdivision of a state, governmental body, including a federal, state, or  
5590 local entity as applicable, any interstate body or any other legal entity.

5591 "Potential nutrient credits" means the possible credits generated by a nutrient credit-  
5592 generating project as calculated pursuant to 9VAC25-900-110. These potential nutrient credits  
5593 shall be expressed in terms of the estimated number of phosphorus and nitrogen credits  
5594 generated.

5595 "Redevelopment" means a project that includes new development on previously developed  
5596 land.

5597 "Registry" means the online Virginia Nutrient Credit Registry established and maintained by  
5598 the department in accordance with § 62.1-44.1.19:20 D of the Code of Virginia.

5599 "Released nutrient credit" means credits that the department has determined to be eligible for  
5600 placement on the Virginia Nutrient Credit Registry.

5601 "Restoration" means the reestablishment of a wetland, stream, or other aquatic resource in  
5602 an area where it previously existed. Wetland restoration means the reestablishment of wetland  
5603 hydrology, soils, and vegetation in an area where a wetland previously existed. Stream restoration  
5604 means the process of converting an unstable, altered, or degraded stream corridor, including  
5605 adjacent areas and floodplains, to its natural conditions.

5606 "Retrofit" means a project that provides improved nutrient reductions to previously developed  
5607 land through the implementation of new BMPs or upgrades to existing BMPs.

5608 "Site" means the physical location within the management area where the nutrient credit-  
5609 generating project and its associated practices, both baseline and credit-generating, are located.

5610 "Site protection instrument" means a deed restriction, conservation easement, or other legal  
5611 mechanism approved by the department that provides assurance that the credits will be  
5612 maintained in accordance with this chapter and the certification requirements.

5613 "Southern Rivers watersheds" means the land areas draining to the following river basins: the  
5614 Albemarle Sound, Coastal; the Atlantic Ocean, Coastal; the Big Sandy River Basin; the Chowan  
5615 River Basin; the Clinch-Powell River Basin; the New Holston River Basin (Upper Tennessee); the  
5616 New River Basin; the Roanoke River Basin; or the Yadkin River Basin.

5617 "State waters" means all water, on the surface and under the ground, wholly or partially within  
5618 or bordering the Commonwealth or within its jurisdiction, including wetlands.

5619 "Steward" or "long-term steward" means any person who is responsible for implementation of  
5620 the long-term management plan of a perpetual nutrient credit-generating project.

5621 "Structural BMPs" means any man-made stormwater control measure or feature that requires  
5622 routine maintenance in order to function or provide the hydrologic, hydraulic, or water quality  
5623 benefit as designed. Structural practices include bioretention, infiltration facilities, wet ponds,  
5624 extended detention, wet and dry swales, permeable pavement, rainwater harvesting, vegetated  
5625 roofs, underground or surface chambers or filters, and other manufactured treatment devices  
5626 (MTDs).

5627 "T" means the soil loss tolerance rate as defined by the NRCS.

5628 "Term nutrient credit" or "term credit" means nutrient reduction activities that generate credits  
5629 for a determined and finite period of at least one year but no greater than five years.

5630 "Total maximum daily load" or "TMDL" means the sum of the individual wasteload allocations  
5631 (WLAs) for point sources, load allocations (LAs) for nonpoint sources, natural background loading,  
5632 and a margin of safety. TMDLs can be expressed in terms of either mass per time, toxicity, or  
5633 other appropriate measure. The TMDL process provides for point versus nonpoint source trade-  
5634 offs. TMDLs in Virginia are expressed as both a daily load and an annual load. For nutrient trading,  
5635 annual loads are most often utilized.

5636 "Tributary" means those river basins for which separate tributary strategies were prepared  
5637 pursuant to § 2.2-218 of the Code of Virginia and includes the Potomac, Rappahannock, York,  
5638 and James River basins, and the Eastern Coastal Basin, which encompasses the creeks and  
5639 rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake  
5640 Bay. For areas outside of the Chesapeake Bay Watershed, "tributary" includes the following  
5641 watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-  
5642 Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

5643 "Urban lands" means lands characterized by developed areas with buildings, asphalt,  
5644 concrete, suburban gardens, and a systematic street pattern. Classes of urban development  
5645 include residential, commercial, industrial, institutional, transportation, communications, utilities,

5646 and mixed urban. Undeveloped land surrounded by developed areas, such as cemeteries, golf  
5647 courses, and urban parks is recognized as urban lands.

5648 "VACS BMP Manual" means the Virginia Agricultural Cost Share BMP Manual.

5649 "VESMP authority" means a Virginia erosion and stormwater management program authority  
5650 as defined in 9VAC25-875-20.

5651 "Virginia Chesapeake Bay TMDL Watershed Implementation Plan," "Watershed  
5652 Implementation Plan," or "WIP" means the Phase I watershed implementation plan strategy  
5653 submitted by Virginia and approved by the U.S. Environmental Protection Agency (EPA) in  
5654 December 2010 to meet the nutrient and sediment allocations prescribed in the Chesapeake Bay  
5655 Watershed TMDL or any subsequent revision approved of EPA.

5656 "Virginia Erosion and Stormwater Management Program" or "VESMP" means a program  
5657 established by a VESMP authority for the effective control of soil erosion and sediment deposition  
5658 and the management of the quality and quantity of runoff resulting from land-disturbing activities  
5659 to prevent the unreasonable degradation of properties, stream channels, waters, and other natural  
5660 resources. The program shall include such items as local ordinances, rules, requirements for  
5661 permits and land-disturbance approvals, policies and guidelines, technical materials, and  
5662 requirements for plan review, inspection, and enforcement consistent with the requirements of the  
5663 Virginia Erosion and Stormwater Management Act, § 62.1-44.15:24 et seq. of the Code of Virginia.

5664 "Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a  
5665 document issued by the department pursuant to the State Water Control Law authorizing, under  
5666 prescribed conditions, the potential or actual discharge of pollutants from a point source to surface  
5667 waters and the use or disposal of sewage sludge.

5668 ~~"Virginia Stormwater Management Program" or "VSMP" means a program to manage the~~  
5669 ~~quality and quantity of runoff resulting from land-disturbing activities and includes such items as~~  
5670 ~~local ordinances, rules, permit requirements, annual standards and specifications, policies and~~  
5671 ~~guidelines, technical materials, and requirements for plan review, inspection, and enforcement,~~  
5672 ~~where authorized in the Stormwater Management Act and pursuant to 9VAC25-870, 9VAC25-~~  
5673 ~~880, or 9VAC25-890. established by the department pursuant to § 62.1-44.15:27.1 of the Code~~  
5674 ~~of Virginia on behalf of a locality on or after July 1, 2014, to manage the quality and quantity of~~  
5675 ~~runoff resulting from any land-disturbing activity that (i) disturbs one acre or more of land or (ii)~~  
5676 ~~disturbs less than one acre of land and is part of a larger common plan of development or sale~~  
5677 ~~that results in one acre or more of land disturbance.~~

5678 "Virginia Water Protection permit" or "VWP permit" means an individual or general permit  
5679 issued by the department under § 62.1-44.15:20 of the Code of Virginia that authorizes activities  
5680 otherwise unlawful under § 62.1-44.5 of the Code of Virginia or otherwise serves as Virginia's  
5681 Section 401 certification.

5682 "VPA" means Virginia Pollution Abatement.

5683 "VPDES" means Virginia Pollutant Discharge Elimination System.

5684 "VSMP authority" means a Virginia stormwater management program authority as defined in  
5685 ~~9VAC25-870-10~~ 9VAC25-875-20.

5686 "VWP" means Virginia Water Protection.

5687 "Water body with perennial flow" means a body of water that flows in a natural or man-made  
5688 channel year-round during a year of normal precipitation as a result of groundwater discharge or  
5689 surface runoff. Such water bodies exhibit the typical biological, hydrological, and physical  
5690 characteristics commonly associated with the continuous conveyance of water.

5691 "Water Quality Guide" means Virginia's Forestry Best Management Practices for Water  
5692 Quality.

5693 "Wetlands" means those areas that are inundated or saturated by surface or groundwater at  
5694 a frequency and duration sufficient to support, and that under normal circumstances do support,  
5695 a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands  
5696 generally include swamps, marshes, bogs, and similar areas.

5697 **9VAC25-900-40. Relationship to other laws and regulations.**

5698 A. Specific requirements regarding the use of nutrient credits are found in the following  
5699 regulations and statutes:

5700 1. Virginia Erosion and Stormwater Management Program (VSMP) Regulation (9VAC25-  
5701 870) (9VAC25-875).

5702 a. ~~VSMP~~ Individual VPDES Permits for Discharges from Construction Activities. As  
5703 specified in § 62.1-44.19:21 B of the Act, those applicants required to comply with  
5704 water quality requirements for land-disturbing activities operating under a construction  
5705 individual permit issued pursuant to ~~9VAC25-870~~ 9VAC25-875 may acquire and use  
5706 perpetual nutrient credits placed on the registry for exchange.

5707 b. ~~VSMP~~ Individual Permits for Municipal Separate Storm Sewer Systems. As  
5708 specified in § 62.1-44.19:21 A of the Act, an MS4 permittee may acquire, use, and  
5709 transfer nutrient credits for purposes of compliance with any wasteload allocations  
5710 established as effluent limitations in an MS4 individual permit issued pursuant to  
5711 ~~9VAC25-870~~ 9VAC25-875. Such method of compliance may be approved by the  
5712 department following review of a compliance plan submitted by the permittee that  
5713 includes the use of nutrient credits and is in accordance with the provisions of § 62.1-  
5714 44.19:21 A.

5715 2. General VPDES Permit for Discharges of Stormwater from Construction Activities  
5716 (9VAC25-880). As specified in § 62.1-44.19:21 B of the Act, those applicants required to  
5717 comply with water quality requirements for land-disturbing activities operating under a  
5718 general ~~VSMP~~ VPDES permit for discharges of stormwater from construction activities  
5719 issued pursuant to 9VAC50-880 may acquire and use perpetual nutrient credits placed on  
5720 the registry for exchange.

5721 3. General VPDES Permit for Discharges of Stormwater from Small Municipal Separate  
5722 Storm Sewer Systems (9VAC25-890). As specified in § 62.1-44.19:21 A of the Act, an  
5723 MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance  
5724 with any wasteload allocations established as effluent limitations in an MS4 general permit  
5725 issued pursuant to 9VAC25-890. Such method of compliance may be approved by the  
5726 department following review of a compliance plan submitted by the permittee that includes  
5727 the use of nutrient credits and is in accordance with the provisions of § 62.1-44.19:21 A.

5728 4. Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9VAC25-  
5729 31). As specified in § 62.1-44.19:21 C of the Act, owners of confined or concentrated  
5730 animal feeding operations issued individual permits pursuant to 9VAC25-31 may acquire,  
5731 use, and transfer credits for compliance with any wasteload allocations contained in the  
5732 provisions of a VPDES permit. Such method of compliance may be approved by the  
5733 department following review of a compliance plan submitted by the permittee that includes  
5734 the use of nutrient credits.

5735 5. Virginia Pollutant Discharge Elimination System (VPDES) Permits for Discharges of  
5736 Storm Water Associated with Industrial Activity. As specified in § 62.1-44.19:21 D of the  
5737 Act, owners of facilities registered for coverage under 9VAC25-151 for the general VPDES  
5738 permit or issued a VPDES permit regulating stormwater discharges that requires nitrogen  
5739 and phosphorus monitoring at the facility may acquire, use, and transfer credits for  
5740 compliance with any wasteload allocations established as effluent limitations in a VPDES

5741 permit. Such method of compliance may be approved by the department following review  
5742 of a compliance plan submitted by the permittee that includes the use of nutrient credits.

5743 6. General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit  
5744 Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in  
5745 the Chesapeake Bay Watershed in Virginia (9VAC25-820). Nutrient credits certified  
5746 pursuant to this chapter may be acquired to offset mass loads of total nitrogen or total  
5747 phosphorus discharged by new or expanded facilities regulated by 9VAC25-820.

5748 B. This chapter shall not be construed to limit or otherwise affect the authority of the  
5749 department to establish and the department to enforce more stringent water quality-based effluent  
5750 limitations for total nitrogen or total phosphorus in permits where those limitations are necessary  
5751 to protect local water quality. The exchange or acquisition of credits pursuant to this chapter shall  
5752 not affect any requirement to comply with such local water quality-based limitations.

5753 **9VAC25-900-60. Limitations, liability, and prohibitions.**

5754 A. Except to the extent it may be an owner as defined by this chapter, none of the following  
5755 shall have responsibility or liability for the performance of practices at a nutrient credit-generating  
5756 project evaluated using the procedures established in this chapter: (i) the department, (ii) a ~~V~~S~~M~~P  
5757 VESMP authority, or (iii) any political subdivision of the Commonwealth.

5758 B. Those persons with whom the department contracts, including those serving as technical  
5759 evaluators on an advisory committee, are advisors to the department, and the department  
5760 remains solely responsible for decisions made regarding implementation of this chapter.

5761 C. For the purposes of this chapter, the certification of nutrient credits that are generated from  
5762 practices funded in part or in whole by federal or state water quality grant funds is prohibited other  
5763 than controls and practices under § 62.1-44.19:20 B 1 a of the Act; however, establishing baseline  
5764 as specified in 9VAC25-900-100 may be achieved through the use of such grants.

5765 D. The option to acquire nutrient credits for compliance purposes shall not eliminate any  
5766 requirement to comply with local water quality requirements, including such requirements lawfully  
5767 imposed by a locality or local MS4.

5768 E. The issuance of a nutrient credit certification under this chapter does not convey any  
5769 property rights of any sort or any exclusive privilege.

5770 F. The issuance of a nutrient credit certification under this chapter does not authorize any  
5771 injury to persons or property or invasion of other private rights, or any infringement of state or  
5772 local law or regulations.

5773 G. Nutrient credit certifications are not transferable except in accordance with 9VAC25-900-  
5774 180. The department may require modification or revocation and reissuance of nutrient credit  
5775 certifications to change the name of the owner of the nutrient credit-generating project and  
5776 incorporate such other requirements as may be necessary under the State Water Control Law or  
5777 the Clean Water Act.

5778 H. No person shall offer for exchange nutrient credits except in compliance with the provisions  
5779 of this chapter.

5780 I. No nutrient credit shall be generated by practices previously implemented to comply with:  
5781 (i) the requirements for a VPDES (9VAC25-31), VPA (9VAC25-32), VWP (9VAC25-210), or  
5782 ~~V~~S~~M~~P (9VAC25-870) VPDES construction general permit (9VAC25-880); (ii) erosion and  
5783 sedimentation control requirements pursuant to ~~9VAC25-840~~ 9VAC25-875; or (iii) the  
5784 requirements of the Chesapeake Bay Preservation Act pursuant to § 62.1-44.15:67-79 of the  
5785 Code of Virginia.

5786 J. Nutrient credit generation and use shall be contemporaneous with the applicable permit's  
5787 compliance period.

5788 **9VAC25-900-90. Nutrient credit release and registration.**

5789 A. Retirement of credits.

5790 1. Pursuant to the requirements of § 62.1-44.19:20 of the Act, 5.0% of the total credits  
5791 certified will be retired by the department at the time of nutrient credit certification and will  
5792 not be placed on the registry for exchange.

5793 2. When phosphorus credits are acquired in accordance with ~~9VAC25-870-69~~ 9VAC25-  
5794 875-610, the associated nitrogen credits generated by the nutrient credit-generating  
5795 project will be retired and removed from the registry by the department.

5796 3. When nitrogen credits are acquired for purposes other than compliance with ~~9VAC25-~~  
5797 ~~870-69~~ 9VAC25-875-610, the associated phosphorus credits generated by the nutrient  
5798 credit-generating project shall not be available for compliance under ~~9VAC25-870-69~~  
5799 9VAC25-875-610.

5800 4. Except as limited by this subsection, associated nitrogen and phosphorus credits  
5801 generated by a nutrient credit-generating project may be exchanged independently.

5802 B. Schedule of release of nutrient credits. The department shall establish a schedule for  
5803 release of credits as follows:

5804 1. For nutrient credit-generating projects using land use conversion, 25% of the credits will  
5805 be released by the department after the department has verified completion of the  
5806 conditions of the nutrient credit certification. For afforestation projects, an additional 25%  
5807 of credits will be released by the department after the site has been planted with a  
5808 minimum of 400 woody stems per acre. The remaining balance of credits will be released  
5809 by the department after it is satisfied that the implementation plan's performance criteria  
5810 required pursuant to 9VAC25-900-120 has been achieved. When a request for credit  
5811 release is made concurrently with the application for nutrient credit certification from land  
5812 conversion practices, the concurrent 25% initial release, and additional 25% release if  
5813 planting has occurred, shall be processed on the same timeline as the application as  
5814 provided in 9VAC25-900-80 C. When the request for credit release is from a previously  
5815 approved land conversion project, the department shall schedule a site visit, if warranted,  
5816 within 30 days of the request and shall deny, approve, or approve with conditions the  
5817 release of the remaining 75% of the nutrient credits within 15 days of the site visit or  
5818 determination that a site visit is not warranted.

5819 2. For nutrient credit-generating projects using wetland or stream restoration, after  
5820 construction 25% of the credits may be released by the department after the department  
5821 has verified completion of the conditions of the nutrient credit certification. Every  
5822 monitoring year thereafter, 25% of the credits may be released if all performance  
5823 standards are met, the area or channel is stable, and, for streams, evidence is presented  
5824 that a bankfull event occurred within the monitoring year. For streams, if a bankfull event  
5825 did not occur, but performance standards are met and the channel is stable, 10% of the  
5826 credits may be released. No additional credits will be released after the fourth monitoring  
5827 year until a bankfull event has occurred. After the fourth monitoring year, if a bankfull event  
5828 occurs, the channel is stable, and all performance standards are met, 25% of the credits  
5829 may be released that monitoring year, not to exceed the remaining credits available. The  
5830 schedule for release of credits shall also require, prior to the release of credits, the  
5831 approval of any required financial assurance mechanism established pursuant to Part VI  
5832 (9VAC25-900-230 et seq.) of this chapter. The department may accelerate the release of  
5833 a maximum of 50% of nutrient credits from a stream restoration project based on (i) a  
5834 determination that the level of risk for restoration failure is low; (ii) the provision of  
5835 additional financial assurance in an amount adequate to cover the cost of project repair or

5836 replacement in the event of failure; and (iii) the experience of the applicant or the  
5837 applicant's agents who will implement the stream restoration project.

5838 3. For nutrient credit-generating projects using practices other than land use conversion  
5839 or wetland or stream restoration, the schedule for release of credits will be determined by  
5840 the department on a case-by-case basis and provided to the applicant with the nutrient  
5841 credit certification. For projects using structural BMPs, the schedule shall also require,  
5842 prior to release of credits, the approval of any required financial assurance mechanism  
5843 established pursuant to Part VI (9VAC25-900-230 et seq.) of this chapter.

5844 C. Registration of nutrient credits. Credits will be placed on the registry and classified as term  
5845 or perpetual credits by the department. The registry will also indicate the number of credits that  
5846 have been released for exchange. Only credits released by the department are available for  
5847 exchange.

5848 **9VAC25-900-100. Establishing baseline.**

5849 A. Practices for establishing baseline must be in place prior to the generation of any credits  
5850 by a nutrient credit-generating project except in the case of land use conversion as described in  
5851 subsection E of this section. The practices for establishing baselines, as provided in this section,  
5852 shall be implemented and properly maintained for each type of operation within the management  
5853 area. Baselines are applicable statewide for nutrient credit-generating projects including those  
5854 located in either the Chesapeake Bay Watershed or the Southern Rivers watersheds. Baseline  
5855 practices are, at a minimum, in accordance with the requirements of the WIP or an approved  
5856 TMDL, whichever is more stringent.

5857 B. Cropland, hayland, and pastures. Baselines for cropland, hayland, or pastures within the  
5858 management area shall be established in accordance with subdivision 1, 2, or 3 of this subsection.

5859 1. The owner holds a valid Certificate of Resource Management Plan Implementation for  
5860 the management area that has been issued pursuant to the Resource Management Plans  
5861 regulation (4VAC50-70).

5862 2. If the owner does not hold a valid Certificate of Resource Management Plan  
5863 Implementation for the management area, the owner shall implement the following  
5864 practices for establishing baseline:

5865 a. Soil conservation. Soil conservation practices for the management area shall be  
5866 implemented and maintained to achieve a maximum soil loss rate not to exceed "T"  
5867 and to address gross erosion when it is present as gullies or other severely eroding  
5868 conditions.

5869 b. Nutrient management. Implementation and maintenance of the nutrient  
5870 management practices required by the nutrient management plan written by a certified  
5871 nutrient management planner pursuant to the Nutrient Management Training and  
5872 Certification Regulations (4VAC50-85).

5873 c. Riparian buffer. A woodland or grass riparian buffer shall be installed and maintained  
5874 around all water bodies with perennial flow within the management area and shall be  
5875 installed and maintained along all water bodies with perennial flow bordering the  
5876 management area. The riparian buffer shall be a minimum width of 35 feet as  
5877 measured from the top of the channel bank to the edge of the cropland, hayland, or  
5878 pasture and in accordance with DCR Specifications for NO. FR-3 or DCR  
5879 Specifications for NO. WQ-1 contained in the VACS BMP Manual.

5880 d. Cover crop. For croplands, cover crops shall be planted to meet the standard  
5881 planting date and other specifications in accordance with DCR Specifications for NO.  
5882 SL-8B contained in the VACS BMP Manual. This requirement applies to all croplands  
5883 where summer annual crops are grown and the summer annual crop receives greater

5884 than a total of 50 pounds per acre of nitrogen application from any nutrient source;  
5885 however, if the cropland is planted to winter cereal crops for harvest in the spring, then  
5886 cover crops do not need to be planted on these croplands during that production year.

5887 e. Livestock water body exclusion. For pastures or when livestock are present within  
5888 the management area, livestock exclusion fencing shall be placed around perennial  
5889 streams, rivers, lakes, ponds, or other water bodies having perennial flow. This  
5890 exclusionary fencing shall be constructed in accordance with DCR Specification NO.  
5891 WP-2W contained in the VACS BMP Manual in order to restrict livestock access to the  
5892 water body. Livestock shall be provided with an alternative watering source. The  
5893 livestock exclusion fencing shall be placed at least 35 feet from the top of the channel  
5894 bank and this exclusion zone shall contain the riparian buffer required by subdivision  
5895 2 c of this subsection. Access points for livestock watering or crossing over a water  
5896 body shall be a hardened surface constructed to DCR Specifications for NO. WP-2W  
5897 contained in the VACS BMP Manual and shall be fenced to limit livestock access to  
5898 the water body at the crossing point. Ponds that have been specifically built for the  
5899 purpose of livestock watering and that do not have perennial flow through an overflow  
5900 pipe or spillway are not required to meet the provisions of this subdivision 2 e.

5901 3. The department may approve a load-based baseline determination equivalent to full  
5902 implementation of the practices identified in subdivision 2 of this subsection.

5903 C. Agricultural animal feeding operations. Baselines for agricultural animal feeding operations  
5904 within the management area shall be established in accordance with either subdivision 1 or 2 of  
5905 this subsection:

5906 1. The animal feeding operation is in compliance with a valid VPDES or VPA permit in  
5907 compliance with the board's regulations.

5908 2. For animal feeding operations excluded from or not required to hold a VPDES or VPA  
5909 permit under the board's regulations, the practices for establishing baseline shall be  
5910 implemented and properly maintained as required in this subdivision 2.

5911 a. Implementation and maintenance of the nutrient management practices required by  
5912 the nutrient management plan written by a certified nutrient management planner  
5913 pursuant to the Nutrient Management Training and Certification Regulations (4VAC50-  
5914 85).

5915 b. For animal feeding operations, except confined poultry operations, a storage facility  
5916 designed and operated to prevent point source discharges of pollutants to state waters  
5917 except in the case of a storm event greater than a 25-year/24-hour storm and to  
5918 provide adequate waste storage capacity to accommodate periods when the ground  
5919 is frozen or saturated, periods when land application of nutrients should not occur due  
5920 to limited or nonexistent crop nutrient uptake, and periods when physical limitations  
5921 prohibit the land application of waste shall be implemented and maintained.

5922 c. For confined poultry operations, storage of poultry waste according to the nutrient  
5923 management plan and in a manner that prevents contact with surface water and  
5924 groundwater. Poultry waste that is stockpiled outside of the growing house for more  
5925 than 14 days shall be kept in a facility or at a location that provides adequate storage.  
5926 Adequate storage management practices shall meet the following minimum  
5927 requirements:

5928 (1) The poultry waste shall be covered to protect it from precipitation and wind.

5929 (2) Stormwater shall not run onto or under the area where the poultry waste is stored.

5930 (3) The ground surface of the poultry waste storage area shall have a minimum of two  
5931 feet separation distance to the seasonal high water table. If poultry waste is stored in

5932 an area where the seasonal high groundwater table lies within two feet of the ground  
5933 surface, the storage area shall be underlain by a low-permeability, hard-surfaced  
5934 barrier such as concrete or asphalt.

5935 (4) For poultry waste that is not stored inside or under a roofed structure, the storage  
5936 area must be at least 100 feet from any surface water, intermittent drainage, wells,  
5937 sinkholes, rock outcrops, and springs.

5938 D. Urban practices. Achievement of baseline for new development, redevelopment, or retrofits  
5939 to existing development shall be required prior to generation of credits. These baselines are:

5940 1. For new development and redevelopment, baseline shall be achieved through  
5941 compliance with the post-construction water quality design criteria requirements of the  
5942 Virginia Erosion and Stormwater Management Program (VSMP) Regulation under  
5943 ~~9VAC25-870-63~~ 9VAC25-875-580. Additionally, for development in a locality with a local  
5944 stormwater management design criteria more stringent than ~~9VAC25-870-63~~ 9VAC25-  
5945 875-580, baselines shall be achieved through compliance with the local stormwater  
5946 management ordinance.

5947 2. For retrofits within the Chesapeake Bay Watershed, baseline shall be at a level  
5948 necessary to achieve the nutrient reduction assigned in the urban sector of the WIP or the  
5949 approved local TMDL, whichever is more stringent.

5950 3. For retrofits within the Southern Rivers watersheds and within a watershed with an  
5951 approved TMDL with total phosphorus or total nitrogen allocations, baselines shall be at  
5952 a level necessary to achieve reductions of the approved TMDL. For all other retrofits within  
5953 the Southern Rivers watersheds, baseline shall be achieved through compliance with the  
5954 post-construction water quality design criteria requirements for development on prior  
5955 developed lands pursuant to ~~9VAC25-870-63 A 2~~ 9VAC25-875-580 A 2.

5956 4. No credits may be certified for a nutrient credit-generating project owned by an MS4  
5957 permittee and located within the permittee's MS4 service area until the level of nutrient  
5958 reduction required by the WIP or approved TMDL, whichever is more stringent, is achieved  
5959 for the entire MS4 service area. MS4 permittees generating credits for exchange shall  
5960 have an accounting system demonstrating that the exchanged credits are not used to  
5961 satisfy the MS4 permit requirements.

5962 E. Land use conversions. Baselines for land use conversion shall be established using the  
5963 preconversion land use. The preconversion land use shall be based on the land use as of (i) July  
5964 1, 2005, for a nutrient credit-generating project located within the Chesapeake Bay Watershed;  
5965 (ii) the date of the approved TMDL for a nutrient credit-generating project located within a TMDL  
5966 watershed but not within the Chesapeake Bay Watershed; or (iii) July, 1, 2009, for a nutrient  
5967 credit-generating project not within an approved TMDL watershed or the Chesapeake Bay  
5968 Watershed.

5969 F. Stream or wetland restoration. Baseline for stream restoration shall be established using  
5970 the pre-restoration condition of the stream. Baseline for wetland restoration shall be established  
5971 on a case-by-case basis, depending on the current land use of the proposed wetland restoration  
5972 area.

5973 G. Other nutrient credit-generating projects. The department shall establish baselines for  
5974 other nutrient credit-generating projects not otherwise regulated by subsections B through F of  
5975 this section. The practices necessary for establishing baseline at these other nutrient credit-  
5976 generating projects shall be in accordance with the requirements of the WIP or the approved  
5977 TMDL and shall utilize the best available scientific and technical information regarding the  
5978 practices.

**5979 9VAC25-900-110. Credit calculation procedures.**

**5980** A. Pursuant to this section, the applicant shall calculate the potential nutrient credits generated  
**5981** by the practices implemented at the nutrient credit-generating projects. The applicable delivery  
**5982** factors, dependent upon the tributary in which the nutrient credit-generating project is located,  
**5983** shall be applied when calculating the potential credits generated.

**5984** B. For agricultural practices, except land use conversion, the potential nutrient credits shall  
**5985** be calculated using removal efficiencies for practices approved by the department. In the  
**5986** Chesapeake Bay Watershed, these practices shall be approved by the department based on the  
**5987** efficiencies assigned by the Chesapeake Bay Program. In the Southern Rivers watersheds, these  
**5988** practices shall be approved by the department based on submitted calculations and  
**5989** demonstrations. The standards and specifications for implementation of the practices will be  
**5990** established by the department and shall be in accordance with the VACS BMP Manual or the  
**5991** FOTG, as applicable.

**5992** C. For urban practices, the potential nutrient credits shall be calculated using the applicable  
**5993** removal efficiencies pursuant to ~~9VAC25-870-65~~ 9VAC25-875-590 or using the best available  
**5994** scientific and technical information available at the time of nutrient credit certification as approved  
**5995** by the department. Limitations on potential nutrient credits from certain BMPs are:

**5996** 1. In the Chesapeake Bay Watershed, nutrient load reductions from practices in place  
**5997** prior to July 1, 2005, may not be used to generate credits. Removal efficiencies shall be  
**5998** based upon those efficiencies approved by the Chesapeake Bay Program partnership  
**5999** where applicable. These efficiencies shall be reviewed at the time of certification renewal  
**6000** and adjusted as necessary based upon changes made by the Chesapeake Bay Program  
**6001** Partnership.

**6002** 2. In the Southern Rivers watersheds, nutrient load reductions from practices in place prior  
**6003** to July 1, 2009, may not be used to generate credits.

**6004** D. For land use conversions, conversion of land to a more intensive land use activity will not  
**6005** generate nutrient credits. The number of potential nutrient credits shall be determined by  
**6006** calculating the nutrient credits per acre and multiplying that number by the total acreage that will  
**6007** undergo land use conversion. The nutrient credits per acre is equal to the amount calculated by  
**6008** subtracting the load per acre of nutrient nonpoint source pollution for the proposed land use after  
**6009** conversion from the load per acre for the preconversion land use. The values used for the loadings  
**6010** per acre in this calculation shall be based on the applicable loading levels provided in the WIP or  
**6011** the approved TMDL, where applicable. The preconversion land use shall be based on the land  
**6012** use as of the date specified in 9VAC25-900-100 E. The load per acre for the preconversion land  
**6013** use shall reflect the implementation of any applicable baseline practices necessary to comply with  
**6014** 9VAC25-900-100 B, C, and D. No credits shall be generated from the conversion of land within  
**6015** 35 feet of a water body with perennial water flow as measured from the top of the channel bank.

**6016** E. For wetland or stream restoration, an existing conditions assessment survey will be  
**6017** completed prior to restoration activities to use as a pre-restoration condition (baseline pursuant  
**6018** to of 9VAC25-900-100 F) and will be used for comparison to post-restoration conditions. The  
**6019** potential number of credits shall be determined by applying protocols or guidance on a case-by-  
**6020** case basis using the best available scientific and technical information, as approved by the  
**6021** department.

**6022** F. For a practice not previously approved by the department, the department will perform a  
**6023** case-by-case review in order to calculate the number of potential nutrient credits generated. The  
**6024** owner shall submit the removal efficiency calculation information for the practice and the  
**6025** calculation of the potential number of credits generated using that efficiency. The department may  
**6026** also request that the submittal include requirements for demonstration projects, the collection of  
**6027** sufficient data to evaluate the results, and any other information the department deems necessary

6028 to determine the validity of the credits. In the Chesapeake Bay Watershed, for a practice not  
6029 approved by the Chesapeake Bay Program Partnership, the department will perform a case-by-  
6030 case review in order to calculate the number of potential nutrient credits generated on a term  
6031 basis.

6032 G. In the certification and recertification of credits, the department may substitute a delivery  
6033 factor that is deemed by the director to be based on the best available scientific and technical  
6034 information appropriate for the tributaries located outside of the Chesapeake Bay Watershed as  
6035 an alternative to any delivery factor derived from the application of the Chesapeake Bay Program  
6036 watershed model.

6037 **9VAC25-900-120. Implementation plan.**

6038 A. The implementation plan submitted pursuant to 9VAC25-900-80 shall provide information  
6039 detailing how the nutrient credit-generating project will generate credits for the term of the credits.  
6040 The implementation plan will include the applicable information as required in subsections B  
6041 through J of this section.

6042 B. For all nutrient credit-generating projects, the implementation plan shall include:

6043 1. An operation and maintenance plan that provides a description and schedule of  
6044 operation and maintenance requirements and detailed written specifications and process  
6045 diagrams for the practices used at the nutrient credit-generating project. The plan must be  
6046 adhered to for the term of the credits and shall include a description of site management  
6047 activities to be performed after meeting all performance standards to ensure long-term  
6048 sustainability of the site.

6049 2. The performance standards that shall be used to evaluate whether the nutrient credit-  
6050 generating project is generating credits as calculated in 9VAC25-900-110.

6051 3. Applicable requirements for the project required pursuant to Part IV (9VAC25-900-140  
6052 et seq.) of this chapter.

6053 C. For nutrient credit-generating projects utilizing managed afforestation land use conversion,  
6054 the implementation plan shall also include:

6055 1. A project plan submitted in the form required by the department and prepared by a  
6056 person trained in (i) forestry management, (ii) nutrient management, or (iii) other  
6057 applicable land management training that includes an understanding of whole land  
6058 management planning. The project plan shall include (i) methods for invasive plant  
6059 species control and eradication if woody invasive plant species impacts 5.0% or more of  
6060 the nutrient credit-generating project's acreage; (ii) a requirement that any harvesting of  
6061 timber shall adhere to best management practices as set forth by Department of Forestry's  
6062 Water Quality Guide and any other applicable local, state, or federal laws or requirements;  
6063 (iii) the land management goals; (iv) a statement that no fertilizer is to be used on the  
6064 nutrient credit-generating project's land conversion acreage for the term of the credit  
6065 generated; (v) a planting plan to include size, species, and spacing of trees; and (vi) any  
6066 planting phases planned for the project if the area will not be planted all at one time, but  
6067 will be planted in different phases. Additionally, if timbering is planned within the land  
6068 conversion area, a copy of the timbering plan shall be submitted to the department at least  
6069 90 days prior to the occurrence of any land disturbance or timbering.

6070 2. Provisions for planting forests to achieve an initial survival density of a minimum of 400  
6071 deciduous tree or evergreen tree woody stems per acre including any noninvasive  
6072 volunteers. Survival of planted deciduous trees shall not be established until the start of  
6073 the second complete growing season following planting. Survival of planted evergreen  
6074 trees may be established after completion of the first complete growing season following  
6075 planting. Survival of mixed specie plantings with a minimum of 200 evergreen trees per

- 6076 acre may be established after completion of the first complete growing season following  
6077 planting.
- 6078 3. A description of agricultural baseline requirements implemented in accordance with  
6079 9VAC50-900-100 B and C that apply to any remaining portions of the management area  
6080 that are not undergoing land use conversion.
- 6081 4. Performance standards and reporting procedures demonstrating ongoing compliance  
6082 with the baseline requirements of 9VAC25-900-100 B and C.
- 6083 D. For nutrient credit-generating projects utilizing natural succession land use conversion, the  
6084 implementation plan shall also include provisions for:
- 6085 1. Forests to achieve an initial density of a minimum of 400 noninvasive woody stems per  
6086 acre.
- 6087 2. Invasive plant species control and eradication if woody invasive plant species impacts  
6088 5.0% or more of the nutrient credit-generating project's acreage.
- 6089 3. A description of agricultural baseline requirements implemented in accordance with  
6090 9VAC25-900-100 B and C that apply to any remaining portions of the management area  
6091 not undergoing land use conversion.
- 6092 4. Performance standards for demonstrating ongoing compliance with the agricultural  
6093 baseline requirements of 9VAC25-900-100 B and C.
- 6094 E. For nutrient credit-generating projects utilizing other land use conversion not subject to  
6095 either subsection C, D, or G of this section, the implementation plan shall also include:
- 6096 1. Description of the land use conversion project and its implementation and maintenance  
6097 criteria.
- 6098 2. Description of the applicable baseline practices implemented in accordance with  
6099 9VAC25-900-100 for the management area including the nutrient credit-generating  
6100 project.
- 6101 3. Performance standards and reporting procedures demonstrating ongoing compliance  
6102 with the baseline practices requirements of 9VAC25-900-100.
- 6103 F. For nutrient credit-generating projects utilizing non-land use conversion agricultural  
6104 practices, the implementation plan shall also include:
- 6105 1. A description of the entire management area. This description shall include (i) the  
6106 acreage and use including descriptions for the proposed practices of the nutrient credit-  
6107 generating project and baseline area; (ii) water features including all streams, ponds,  
6108 lakes, and wetlands; (iii) environmentally sensitive sites as defined in 4VAC50-85-10; (iv)  
6109 areas with highly erodible soils; and (v) the current agricultural operations, crops, or animal  
6110 facilities.
- 6111 2. Copies of the current nutrient management plans developed by a certified nutrient  
6112 management planner and approved by the department and any soil conservation plans  
6113 completed by a certified conservation planner.
- 6114 3. Information on the location and status of all existing and proposed BMPs including  
6115 implementation schedules, lifespan, and maintenance procedures for each BMP that  
6116 constitutes the baseline requirements.
- 6117 G. For nutrient credit-generating projects utilizing approved wetland and stream mitigation  
6118 projects pursuant to § 62.1-44.15:23 of the Code of Virginia, the implementation plan shall also  
6119 include:
- 6120 1. A copy of the approved mitigation banking instrument.

- 6121 2. A plan view map clearly delineating and labeling areas to be considered for credit  
6122 conversion.
- 6123 3. A spreadsheet or table listing each labeled area. For each labeled area, the table shall  
6124 include:
- 6125 a. The type of eligible land use conversion or restoration practice;
  - 6126 b. The acreage or linear feet of the area;
  - 6127 c. The available mitigation credits;
  - 6128 d. The potential nutrient credits; and
  - 6129 e. The ratio of mitigation credits to nutrient credits.
- 6130 4. Documentation that complies with the department-approved procedure to ensure  
6131 credits are not used for both wetland or stream credit and nutrient credit purposes.
- 6132 5. Documentation shall include written approval from the Interagency Review Team, which  
6133 oversees stream and wetland mitigation projects pursuant to 33 CFR 332.8 and § 62.1-  
6134 44.15:23 of the Code of Virginia, to establish a nutrient credit generating site within an  
6135 approved mitigation bank.
- 6136 H. For nutrient credit-generating projects utilizing proposed new wetland or stream restoration  
6137 projects not subject to 33 CFR 332.8 and § 62.1-44.15:23 of the Code of Virginia, the  
6138 implementation plan shall also include, where appropriate to the type of restoration and project:
- 6139 1. Certification that the owner will obtain all appropriate permits or other authorizations  
6140 needed to construct and maintain the restoration activities, prior to initiating work in state  
6141 waters.
  - 6142 2. An initial wetland restoration plan, which shall include the following:
    - 6143 a. The goals and objectives in terms of proposed nutrient reductions and restoration  
6144 activities;
    - 6145 b. A detailed location map (e.g., a U.S. Geologic Survey topographic quadrangle map)  
6146 including latitude and longitude to the nearest second and the hydrologic unit code  
6147 (HUC) at the center of the site;
    - 6148 c. A description of the surrounding land use;
    - 6149 d. A hydrologic analysis, including a draft water budget based on expected monthly  
6150 inputs and outputs that will project water level elevations for a typical year, a dry year,  
6151 and a wet year;
    - 6152 e. The groundwater elevation data or, if not available, the proposed location of  
6153 groundwater monitoring wells to collect this data;
    - 6154 f. Wetland delineation confirmation and data sheets and maps for existing surface  
6155 water areas on the proposed site;
    - 6156 g. A preliminary grading plan;
    - 6157 h. A preliminary wetland planting scheme, including suggested plant species and  
6158 zonation of each vegetation type proposed;
    - 6159 i. Descriptions of existing soils, including general information on topsoil and subsoil  
6160 conditions, permeability, and the need for soil amendments;
    - 6161 j. A preliminary design of any water control systems or structures for wetland  
6162 restoration or establishment;
    - 6163 k. Depiction of any land conversion or other buffer areas associated with the nutrient  
6164 credit-generating entity;
    - 6165 l. A description of any structures or features necessary for the success of the site; and

- 6166 m. A preliminary schedule for site construction.
- 6167 3. An initial stream restoration plan, which shall include the following:
- 6168 a. The goals and objectives in terms of proposed nutrient reductions and restoration
- 6169 activities;
- 6170 b. A detailed location map (e.g., a U.S. Geologic Survey topographic quadrangle map),
- 6171 including the latitude and longitude (to the nearest second) and the hydrologic unit
- 6172 code (HUC) at the center of the site;
- 6173 c. A description of the surrounding land use;
- 6174 d. The preliminary proposed stream segment restoration locations, including plan
- 6175 view, profile, and cross-section sketches;
- 6176 e. The existing stream deficiencies that need to be addressed;
- 6177 f. The proposed restoration measures to be employed, including channel
- 6178 measurements, proposed design flows, types of instream structures, and conceptual
- 6179 planting scheme for streambank plantings;
- 6180 g. Reference stream data, if available;
- 6181 h. Depiction of any land conversion or other buffer areas associated with the nutrient
- 6182 credit-generating project; and
- 6183 i. A preliminary schedule for site construction.
- 6184 4. Prior to construction of the restoration site, the following final plans shall be submitted
- 6185 where appropriate to the type of restoration:
- 6186 a. The final wetland restoration plan, which shall include all of the items listed in
- 6187 subdivision H 2 of this section and the following:
- 6188 (1) A summary of the type and acreage of existing stream and wetland impacts
- 6189 anticipated during the construction of the restoration site and the proposed
- 6190 compensation for these impacts;
- 6191 (2) A site access plan;
- 6192 (3) An erosion and sediment control plan meeting the requirements of ~~9VAC25-840~~
- 6193 9VAC25-875;
- 6194 (4) The final construction schedule; and
- 6195 (5) A monitoring plan as detailed in subdivision H 4 c of this section.
- 6196 b. A final stream restoration plan, which shall include the items listed in subdivision H
- 6197 3 of this section of this section and the following:
- 6198 (1) A summary of the type and acreage or linear feet of impacts to state waters
- 6199 anticipated during the construction of the restoration site and the proposed
- 6200 compensation for these impacts;
- 6201 (2) A detailed plan view, profile, and cross-section sketches with the location of
- 6202 proposed restoration measures;
- 6203 (3) A site access plan;
- 6204 (4) An erosion and sediment control plan meeting the requirements of ~~9VAC25-840~~
- 6205 9VAC25-875;
- 6206 (5) The final construction schedule; and
- 6207 (6) A monitoring plan as detailed in subdivision H 4 c of this section.
- 6208 c. A monitoring plan, which shall include: (i) monitoring goals; (ii) proposed
- 6209 performance standards; (iii) parameters to be monitored; (iv) methods of monitoring;

6210 (v) length of monitoring period; (vi) monitoring and reporting schedule; (vii) reporting  
6211 requirements; and (viii) projects responsible for monitoring and reporting.

6212 (1) Performance standards for wetland or stream restoration shall include specific,  
6213 measureable parameters for determination of performance in comparison to as-built  
6214 conditions. For wetland restoration, performance standards may include applicable  
6215 parameters to demonstrate characteristics of wetland formation and stability for the  
6216 type of wetland restored, including hydrology, soils, vegetation, and stability of any  
6217 water control structures or berms. For stream restoration, performance standards may  
6218 include applicable parameters to demonstrate characteristics of channel stability,  
6219 including dimension, pattern, profile, materials, and stability of the channel and any  
6220 structures.

6221 (2) Monitoring methods and parameters shall be selected based on type of wetland or  
6222 stream restoration, the implementation plan, and performance standards of the  
6223 nutrient credit-generating project, and will be outlined in the monitoring plan. For  
6224 wetland restoration, the monitoring plan shall include the location and number of photo  
6225 stations, monitoring wells, vegetation sampling points, other monitoring equipment,  
6226 and reference wetlands, if available. For stream restoration, the plan shall include the  
6227 location and number of stations utilized for photo-monitoring, cross-sections, profiles,  
6228 pattern measurements, streambank stability measurements, streambank vegetation  
6229 surveys, bank pins, scour chains, stream gages, rain gages, other monitoring  
6230 equipment, and reference streams, if available.

6231 (3) The monitoring and reporting schedule shall include an as-built survey conducted  
6232 directly following construction and at least six monitoring and reporting events over a  
6233 10-year monitoring period following construction. All monitoring activities shall occur  
6234 during the growing season, with the exception that after year three, physical monitoring  
6235 of stream condition (cross-section, profiles, pattern) may be conducted outside the  
6236 growing season. For any year in which planting was conducted, monitoring of woody  
6237 vegetation shall take place no earlier than October and at least six months following  
6238 planting. If all performance standards have not been met in the 10th year, then a  
6239 monitoring report shall be required for each consecutive year until two sequential  
6240 annual reports indicate that all performance standards have been successfully  
6241 satisfied. The extent of monitoring may be reduced, upon approval by the department,  
6242 on a case-by-case basis, in response to exceptional attainment of performance  
6243 standards. Submittal of a final monitoring report, typically prepared the 10th growing  
6244 season following construction completion, shall be required as a baseline for long-term  
6245 management.

6246 5. A long-term management plan, which shall include:

6247 a. Restoration projects shall include minimization of active engineering features (e.g.,  
6248 pumps) that require long-term management and appropriate site selection to ensure  
6249 that natural hydrology and landscape context will support long-term sustainability;

6250 b. Long-term management and maintenance shall include basic management as  
6251 necessary to ensure long-term sustainability of the nutrient credit-generating project  
6252 such as long-term repair or replacement, maintenance of water control or other  
6253 structures, or easement enforcement;

6254 c. The owner shall designate a responsible long-term steward in the plan. The owner  
6255 of the nutrient credit-generating project is the default long-term steward and is  
6256 responsible for implementing the long term management plan and management of the  
6257 financial assurance. However, the owner may transfer the long-term management  
6258 responsibilities and management of the long-term financial assurance to a long-term

6259 steward or land stewardship project, such as a public agency, nongovernmental  
6260 organization, or private land manager, upon review and approval by the department;  
6261 d. Long-term management needs, annual cost estimates for these needs, and  
6262 identifying the funding mechanism that will be used to meet these needs shall be  
6263 included.

6264 I. For nutrient credit-generating projects utilizing urban practices, the implementation plan  
6265 shall also include:

6266 1. A description of the contributing drainage area (CDA) for the proposed nutrient credit-  
6267 generating project's BMP. This description shall include (i) the acreage and land covers  
6268 (e.g., impervious, forest or open space, managed turf); (ii) water features including all  
6269 streams, ponds, lakes, and wetlands; (iii) identification of all impaired waters and approved  
6270 TMDLs; and (iv) identification or mapping of the soil types within the CDA, by USDA  
6271 hydrological soil group.

6272 2. A list of all of the current urban nutrient management plans developed by a certified  
6273 nutrient management planner and being implemented within the CDA.

6274 3. Information on the location and description of existing BMPs within the CDA. For BMPs  
6275 that constitute the baseline requirements include implementation schedules, lifespan, and  
6276 maintenance procedures.

6277 4. For development and redevelopment projects, the implementation plan shall include the  
6278 erosion and sediment control plan and the stormwater management plan developed in  
6279 accordance ~~9VAC25-870~~ 9VAC25-875.

6280 5. For retrofits, the implementation plan shall include relevant credit calculations and  
6281 documentation as deemed appropriate by the department.

6282 J. For other types of activities or projects not presented in subsections C through I of this  
6283 section, the implementation plan shall include information as deemed appropriate by the  
6284 department in order to evaluate the credits for nutrient credit certification.

6285 **9VAC25-900-230. Financial assurance applicability.**

6286 A. An owner of a nutrient credit-generating project that utilizes structural BMPs for the  
6287 generation of perpetual credits shall submit and maintain financial assurance in accordance with  
6288 this part. The financial assurance mechanism shall be submitted to and approved by the  
6289 department prior to the release of credits.

6290 B. An owner of a nutrient credit-generating project that utilizes structural BMPs for the  
6291 generation of term credits with terms that exceed one year shall submit and maintain financial  
6292 assurance in accordance with this part. However, an owner of a nutrient credit-generating project  
6293 that utilizes structural BMPs for the generation of term credits with terms that exceed one year  
6294 shall not be required to submit and maintain financial assurance in accordance with this part,  
6295 provided that the department annually approves the generation of the term nutrient credits prior  
6296 to release of the credits. In accordance with 9VAC25-900-90 B, the financial assurance  
6297 mechanism shall be submitted to and approved by the department prior to the release of credits.  
6298 For the purposes of this part, term credit shall refer to credit with a term greater than one year but  
6299 not perpetual.

6300 C. An owner of a nutrient credit-generating project using proposed new wetland or stream  
6301 restoration practices not subject to 33 CFR 332.8 and § 62.1-44.15:23 of the Code of Virginia for  
6302 the generation of perpetual credits shall be required to submit and maintain financial assurance  
6303 in accordance with this chapter. In accordance with 9VAC25-900-90 B, the financial assurance  
6304 mechanism shall be submitted to and approved by the department prior to the release of credits.  
6305 The following financial assurances shall be provided for these new wetland or stream restoration  
6306 projects:

6307 1. A monitoring plan financial assurance mechanism shall be established to ensure  
6308 implementation of the monitoring plan pursuant to 9VAC25-900-120 for any nutrient  
6309 credits generated from wetland or stream restoration. When the owner conducts the  
6310 required monitoring and submits a complete monitoring report as specified in the  
6311 monitoring plan and report requirements, then the owner may request a reduction of the  
6312 required financial assurance amount equivalent to the cost of one year of monitoring,  
6313 subject to department approval. If any funds remain in the financial assurance mechanism  
6314 after the monitoring period, the mechanism shall be maintained until the final monitoring  
6315 report is submitted and approved, at which point the mechanism shall be released by the  
6316 department;

6317 2. A long-term management fund financial assurance mechanism shall be established in  
6318 support of required long-term management plan tasks pursuant to 9VAC25-900-120 for  
6319 any nutrient credits generated from wetland or stream restoration. Long-term management  
6320 funds shall be placed in a separate interest bearing trust account in an appropriate  
6321 financial institution and may be funded from a sufficient percentage of all credit sale  
6322 proceeds, a single lump sum payment, or an approved schedule of payments, subject to  
6323 department approval. No long-term management funds shall be used to finance any  
6324 expense or activity other than those specified in the long-term management plan unless  
6325 approved by the department. Responsibility for and access to the long-term management  
6326 fund is given to the owner or long-term steward and may be transferred to any new long-  
6327 term steward that is designated by the owner and approved by the department; and

6328 3. In lieu of the long-term management fund trust account for stream restoration projects  
6329 established in subdivision 2 of this subsection, a third-party long-term steward approved  
6330 by the department, such as a public agency, nongovernmental organization, or private  
6331 land manager, may hold long-term management funds in a separate interest-bearing  
6332 account to be used only for the long-term management of the stream restoration project.

6333 D. When the nutrient credits are generated or used by a locality, authority, utility, sanitation  
6334 district, or owner operating an MS4 or a point source permitted under ~~9VAC25-870~~ 9VAC25-875,  
6335 the existence of tax or rate authority may be used by such entity at its option in satisfaction of the  
6336 financial assurance required pursuant to this part.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-31 9VAC25-115 9VAC25-151 9VAC25-210 9VAC25-830 9VAC25-890 9VCA25-900
<b>VAC Chapter title(s)</b>	Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Seafood Processing Facilities Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity Virginia Water Protection Permit Regulation Chesapeake Bay Preservation Area Designation and Management Regulations Virginia Pollutant Discharge Elimination System (VPDES) General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems (MS4s) Certification of Nonpoint Source Nutrient Credits
<b>Action title</b>	Citation updates in response to consolidation of Stormwater regulations and revisions to the Code of Virginia
<b>Date this document prepared</b>	May 23, 2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Final Exempt

**Cost Benefit Analysis**

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

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

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

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

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p><b>Background:</b> This is a final exempt regulatory action. No changes are proposed other than corrections of technical errors (updating citation references) in applicable State Water Control Board regulations as a result of the consolidation of the stormwater regulations into a single chapter (9VAC25-875) and changes necessary to conform to changes to state law that become effective July 1, 2024. (Chapters 68 and 758 of the 2016 Acts of Assembly).</p> <p><b>Direct Costs:</b> N/A. There are no new direct costs associated with these corrections of technical errors and updates to conform to changes to state law.</p> <p><b>Indirect Costs:</b> N/A. There are no new indirect costs associated with these corrections of technical errors and updates to conform to changes to state law.</p> <p><b>Direct Benefits:</b> These amendments will benefit the regulated community and avoid confusion concerning the location of applicable stormwater requirements.</p> <p><b>Indirect Benefits:</b> N/A. There are no new indirect benefits associated with these corrections of technical errors and updates to conform to changes to state law.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct &amp; Indirect Costs</p>	<p>Direct &amp; Indirect Benefits</p>
	<p>(a) \$0</p>	<p>(b) Indeterminate direct benefits by reducing confusion concerning the location of applicable stormwater requirements.</p>
<p>(3) Net Monetized Benefit</p>	<p>Indeterminate but clearly positive.</p>	

(4) Other Costs & Benefits (Non-Monetized)	These amendments will benefit the regulated community and avoid confusion concerning the location of applicable stormwater requirements. Benefits are unable to be monetized but are clearly positive.
(5) Information Sources	

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>This is a final exempt regulatory action. No changes are proposed other than corrections of technical errors (updating citation references) in applicable State Water Control Board regulations as a result of the consolidation of the stormwater regulations into a single chapter and changes necessary to conform to changes to state law.</p> <p><b>Direct Costs:</b> Unable to monetize costs to regulated community associated with confusion concerning state law and incorrect regulatory references.</p> <p><b>Indirect Costs:</b> Unable to monetize costs to regulated community associated with confusion concerning state law and incorrect regulatory references.</p> <p><b>Direct Benefits:</b> None. Maintaining the status quo does not benefit the regulated community or the agency.</p> <p><b>Indirect Benefits:</b> None. Maintaining the status quo does not benefit the regulated community or the agency.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Indeterminate.	(b) None.
(3) Net Monetized Benefit	Indeterminate but clearly negative.	
(4) Other Costs & Benefits (Non-Monetized)	Maintaining the Status Quo would mean the current regulations are not as clear as they could be because they contain outdated citations and are not consistent with state law.	
(5) Information Sources	N/A	

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>This is a final exempt regulatory action. No changes are proposed other than corrections of technical errors (updating citation references) in applicable State Water Control Board regulations as a result of the consolidation of the stormwater regulations into a single chapter and changes necessary to conform to changes to state law.</p> <p><b>Direct Costs:</b> N/A</p> <p><b>Indirect Costs:</b> N/A</p> <p><b>Direct Benefits:</b> N/A</p> <p><b>Indirect Benefits:</b> N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>This is a final exempt regulatory action. No changes are proposed other than corrections of technical errors (updating citation references) in applicable State Water Control Board regulations as a result of the consolidation of the stormwater regulations into a single chapter and changes necessary to conform to changes to state law.</p> <p><b>Direct Costs:</b> See table 1a.</p> <p><b>Indirect Costs:</b> See table 1a.</p> <p><b>Direct Benefits:</b> See table 1a.</p>	
--	--	--

	<b>Indirect Benefits:</b> See table 1a.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See table 1a.	(b) See table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See table 1a.	
(4) Assistance	See table 1a.	
(5) Information Sources	See table 1a.	

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>This is a final exempt regulatory action does not impact families. No changes are proposed other than corrections of technical errors (updating citation references) in applicable State Water Control Board regulations as a result of the consolidation of the stormwater regulations into a single chapter and changes necessary to conform to changes to state law.</p> <p><b>Direct Costs:</b> N/A</p> <p><b>Indirect Costs:</b> N/A</p> <p><b>Direct Benefits:</b> N/A</p> <p><b>Indirect Benefits:</b> N/A</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See table 1a.	(b) See table 1a.

(3) Other Costs & Benefits (Non-Monetized)	See table 1a.
(4) Information Sources	See table 1a.

**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>This is a final exempt regulatory action. No changes are proposed other than corrections of technical errors (updating citation references) in applicable State Water Control Board regulations as a result of the consolidation of the stormwater regulations into a single chapter and changes necessary to conform to changes to state law.</p> <p><b>Direct Costs:</b> See table 1a.</p> <p><b>Indirect Costs:</b> See table 1a.</p> <p><b>Direct Benefits:</b> See table 1a.</p> <p><b>Indirect Benefits:</b> See table 1a.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See table 1a.	(b) See table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See table 1a.	
(4) Alternatives	See table 1a.	
(5) Information Sources	See table 1a.	

**Changes to Number of Regulatory Requirements****Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

*Change in Regulatory Requirements*

<b>VAC Section(s) Involved*</b>	<b>Authority of Change</b>	<b>Initial Count</b>	<b>Additions</b>	<b>Subtractions</b>	<b>Total Net Change in Requirements</b>
9VAC25-31-950	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-31-960	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-31-970	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	3	0	0	0
	(D/R):	0	0	0	0
9VAC25-31-980	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	1	0	0	0
	(D/R):	0	0	0	0
9VAC25-31-1010	(M/A):	5	0	0	0
	(D/A):	0	0	0	0
	(M/R):	1	0	0	0
	(D/R):	0	0	0	0
9VAC25-31-1020	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	4	0	0	0
	(D/R):	0	0	0	0
9VAC25-31-1030	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-115-50	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0

9VAC25-151-60	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-151-70	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-210-60	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	18	0	0	0
	(D/R):	0	0	0	0
9VAC25-830-40	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-830-130	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	6	0	0	0
	(D/R):	0	0	0	0
9VAC25-830-140	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	6	0	0	0
	(D/R):	0	0	0	0
9VAC25-830-150	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	1	0	0	0
	(D/R):	0	0	0	0
9VAC25-890-1	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-890-20	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-890-30	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
	(M/A):	0	0	0	0

9VAC25-890-40	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-900-10	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
9VAC25-900-40	(M/A):	1	0	0	0
	(D/A):	3	0	0	0
	(M/R):	7	0	0	0
	(D/R):	2	0	0	0
9VAC25-900-60	(M/A):	1	0	0	0
	(D/A):	5	0	0	0
	(M/R):	1	0	0	0
	(D/R):	5	0	0	0
9VAC25-900-90	(M/A):	1	0	0	0
	(D/A):	18	0	0	0
	(M/R):	0	0	0	0
	(D/R):	2	0	0	0
9VAC25-900-100	(M/A):	0	0	0	0
	(D/A):	10	0	0	0
	(M/R):	0	0	0	0
	(D/R):	17	0	0	0
9VAC25-900-110	(M/A):	0	0	0	0
	(D/A):	22	0	0	0
	(M/R):	0	0	0	0
	(D/R):	22	0	0	0
9VAC25-900-120	(M/A):	0	0	0	0
	(D/A):	1	0	0	0
	(M/R):	7	0	0	0
	(D/R):	116	0	0	0
9VAC25-900-230	(M/A):	0	0	0	0
	(D/A):	4	0	0	0
	(M/R):	0	0	0	0
	(D/R):	14	0	0	0
				<b>Grand Total of Changes in Requirements:</b>	<b>(M/A): 0</b> <b>(D/A): 0</b> <b>(M/R): 0</b> <b>(D/R): 0</b>

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

**Agency note:** This is a final exempt regulatory action. No changes are proposed other than corrections of technical errors (updating citation references) in applicable State Water Control Board regulations as a result of the consolidation of the stormwater regulations into a single chapter and changes necessary to conform to changes to state law.

*Cost Reductions or Increases (if applicable)*

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
N/A				

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
		These amendments will benefit the regulated community and avoid confusion concerning the location of applicable stormwater requirements. Benefits are indeterminate but clearly positive.

*Length of Guidance Documents (only applicable if guidance document is being revised)*

Title of Guidance Document	Original Word Count	New Word Count	Net Change in Word Count
N/A			

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

**TAB F**



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

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Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

**MEMORANDUM**

**TO:** State Water Control Board Members

**FROM:** Elizabeth McKercher

A handwritten signature in black ink that reads "Elizabeth McKercher".

Director, Water Planning Division

**DATE:** May 7, 2024

**RE:** Approval of amendment to the Water Quality Management Planning Regulation (9VAC25-720) to include ten wasteload allocations from two Total Maximum Daily Load (TMDL) reports.

**Executive Summary**

Staff will ask the Board to approve amendments to Virginia's Water Quality Management Planning regulation (9VAC25-720) to add wasteload allocations (WLAs) from two Total Maximum Daily Load (TMDL) reports. As of July 1, 2014, TMDL WLAs receive State Water Control Board approval prior to the Environmental Protection Agency's (EPA) approval of TMDL reports due to amendments outlined in §2.2-4006 A 14 of the Code of Virginia. The TMDL reports were developed using public engagement, consistent with DEQ's "Public Participation Procedures for Water Quality Management Planning" guidance GM-23-2005. The TMDL reports have been reviewed and given provisional approval by EPA for required TMDL elements pending State Water Control Board approval of the wasteload allocations.

**I. Background**

The Clean Water Act (CWA) and the U.S. EPA Water Quality Management and Planning Regulation (40 CFR §130) require states to identify waters that are in violation of water quality standards and to place these waters on the state's 303(d) List of Impaired Waters. Also, the CWA and EPA's enabling regulation require that a TMDL be developed for those waters identified as impaired. In addition, the Code of Virginia, §62.1-44.19:7.C requires the State Water Control Board (the Board) to develop TMDLs for impaired waters. A TMDL is a determination of the amount of a specific pollutant that a water body is capable of receiving without violating water quality standards for that pollutant. TMDLs are required to identify all sources of the pollutant and calculate the pollutant loads from each source that are necessary for the attainment of water quality standards.

Every TMDL consists of three basic components. They are the point source component called the wasteload allocation (WLA), the nonpoint source component called the load allocation (LA), and the margin of safety component (MOS). The TMDL is equal to the sum of these three components.

The U.S. EPA's Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate TMDLs in the state's Water Quality Management Plan. Also, U.S. EPA's Water Quality Management and Planning Regulation 40 CFR§122.44(d) (1) (vii) (B) requires that new or reissued Virginia Pollution Discharge Elimination System (VPDES) permits be consistent with the TMDL WLA. This means that the WLA component of the TMDL will be implemented through the requirements specified in the VPDES permits, for example through numeric water quality-based effluent limitations or in certain cases best management practices (BMPs). Virginia implements the LA component using existing voluntary, incentive, and regulatory programs such as the Virginia Agricultural Cost-Share Program and Federal Section 319(h) TMDL implementation funding. Specific management actions addressing the LA component are compiled in a TMDL implementation plan.

## **II. Proposed Actions**

Staff will propose the following Board actions:

### **Amendment of Water Quality Management Planning regulation to incorporate ten new WLAs (Attachment II)**

Attachment I includes specific portions of the TMDL reports in which DEQ developed the WLA's including the TMDL itself and all the TMDL allocation components, the pollutant reduction scenarios, implementation strategies, reasonable assurance that the TMDL can be implemented, and a summary of the public participation process.

1. The report titled, "*Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg*" proposes sediment reductions for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek and provides sediment wasteload allocations of 424,000 pounds/year, 303,000 pounds/year, 253,000 pounds/year, 573,000 pounds/year, 377,000 pounds/year, and 2,870,000 pounds/year respectively and proposes phosphorous reductions for Oldtown Creek, Rohoic Creek, and Swift Creek and provides phosphorus wasteload allocation of 404 pounds/year, 426 pounds/year, and 3,145 pounds/year respectively.
2. The report titled, "*PCB Total Maximum Daily Load Development for Mountain Run, Culpeper County, Virginia*" proposes PCB reductions for Mountain Run and provides a PCB waste load allocation of 2,775 milligrams/year.

The process for amending the Water Quality Management Planning regulation is specified in §2.2-4006 A 14 and §2.2-4006 B of the Code of Virginia. The amendments consist of adding ten new WLAs that are included in the TMDL reports reviewed by EPA. Staff will therefore propose that the Board, in accordance with §2.2-4006 A 14 and §2.2-4006 B of the Code of Virginia, adopt the amendments to the Water Quality Management Planning Regulation (9 VAC 25-720) as provided in Attachment II. The associated Virginia Regulatory Town Hall document is included as Attachment III.

## **III. Public Participation**

The TMDL reports listed in Attachment I were developed in accordance with Federal Regulations (40 CFR §130.7). The TMDL reports were subject to the public participation process contained in §2.2-4006 A 14 of the Code of Virginia and DEQ's "Public Participation Procedures for Water Quality Management Planning" guidance GM23-2005. TMDL reports are also made available to the public on DEQ's web site under <https://www.deq.virginia.gov/our-programs/water/water-quality/tmdl-development/draft-tmdls>.

The James River Tributaries TMDL study included an initial public meeting held on January 26, 2021, with 43 attendees and two comments received during the 30-day public comment period. Additionally, three Technical Advisory Committee meetings were held on February 3, 2021, April 14, 2021, May 9, 2022 that had 21, 17 and 11 attendees, respectively. A final public meeting was held on February 15, 2023 with 15 attendees and two comments received during the public comment period.

The Mountain Run TMDL study included an initial public meeting held on January 13, 2021 with 14 attendees and no comments received during the 30-day public comment period. Technical Advisory Committee meetings were held on January 13, 2021 and July 26, 2022 that had 11 and 3 attendees respectively. A final public meeting was held on September 6, 2023 with 5 attendees and one public comment received during the public comment period.

The proposed final amendments to the Water Quality Management Planning regulation are exempt from the provisions of Article II of the Administrative Process Act. The TMDL WLAs listed in Attachment II were published in the Virginia Register (Volume 40, Issue 16) on March 25, 2024, with a public comment period ending on April 24, 2024. Staff received no comments.

#### **IV. Presenter Contact Information:**

##### **Wasteload Allocation Changes to the Water Quality Management Planning Regulation**

Contact: Justin Williams, Manager, Office of Watershed & Local Government Assistance

Phone Number: (804) 659-1125

E-mail: [Justin.Williams@DEQ.Virginia.gov](mailto:Justin.Williams@DEQ.Virginia.gov)

#### **V. Attachments**

- **Attachment I** – Portions of two TMDL reports (with ten new TMDL wasteload allocations) from which DEQ developed the WLAs
- **Attachment II** – Amended Water Quality Management Planning regulation proposed for Board adoption
- **Attachment III** – Virginia Regulatory Town Hall Form TH-09 – Exempt Action Final Regulation

## **Attachment I – Portions of two TMDL reports, with the ten new wasteload allocations for approval by the Board**

### **Affected Waterbodies and Localities for the ten new TMDL waste load allocations:**

#### **James River Basin (9VAC25-720-60 A)**

1. *TMDL Report: Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg.*
  - This TMDL report proposes sediment reductions for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek and provides sediment waste load allocation of 424,000 pounds/year, 303,000 pounds/year, 253,000 pounds/year, 573,000 pounds/year, 377,000 pounds/year, and 2,870,000 pounds/year.
  - This TMDL report proposes phosphorous reductions for Oldtown Creek, Rohoic Creek, and Swift Creek and provides phosphorus waste load allocation of 404 pounds/year, 426 pounds/year, and 3,145 pounds/year.

#### **Rappahannock River Basin (9 VAC 25-720-70 A):**

2. *TMDL Report: PCB Total Maximum Daily Load Development for Mountain Run, Culpeper County, Virginia*
  - This TMDL report proposes PCB reductions for Mountain Run and provides a PCB waste load allocation of 2,775 milligrams/year.

**Benthic TMDL Development for Bailey Creek,  
Nuttree Branch, Oldtown Creek, Proctors Creek,  
Rohoic Creek, and Swift Creek Watersheds  
Located in Chesterfield, Dinwiddie, and Prince  
George Counties and Cities of Hopewell, Colonial  
Heights, and Petersburg**



**Prepared by:  
Wetland Studies and Solutions, Inc.  
and  
James Madison University**

**Prepared for:  
Virginia Department of Environmental Quality  
January 2023**



## **Acknowledgements**

### **Project Personnel**

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#### **James Madison University**

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#### **Virginia Department of Environmental Quality (VADEQ)**

Kelley West, Environmental Planner  
Jennifer Palmore, Water Planning Team Leader  
Denise Moyer, TMDL Coordinator

#### **Technical Advisory Committee**

Laura Barry, Scott Bookwalter, Weedon Cloe, Scott Flanigan, Rebecca Stewart -  
Chesterfield County  
Alan Lederman - Chesterfield County School Board  
Arnold “Chip” Kramer - John Tyler Community College  
Tracey Harmon - VDOT  
Ashley Hall - Stantec representing VDOT  
Erin Reilly - James River Association  
Kelly Hengler - CE&H Heritage Civic League  
David Sirois - Addison Evans Water Production and Lab Facility  
Ryan Shore - Aleris  
Laura Nicklin - Ashland Special Ingredients G.P.  
Julian Lipscomb - Branscome Incorporated  
Jennifer Rogers, Liz McKercher, Oula Shehab-Dandan - Dominion Energy  
Randall Breeden - International Paper  
Ryan Smith - LaBella Associates  
Mitchell Scott - Martin Marietta Materials, Inc.  
Emily Guillaume, Andrea Wortzel - Troutman Pepper representing VA Manufacturers Assn.

### **For additional information, please contact:**

#### **Virginia Department of Environmental Quality**

Piedmont Regional Office, Glen Allen: Kelley West (804-432-7946)

## EXECUTIVE SUMMARY

### Background

This TMDL study spans six watersheds near Richmond and Petersburg, Virginia. These watersheds include Bailey Creek in Hopewell City and Prince George County, Nuttree Branch in Chesterfield County, Oldtown Creek in Chesterfield County and the City of Colonial Heights, Proctors Creek in Chesterfield County, Rohoic Creek in Dinwiddie County and City of Petersburg, and Swift Creek in Chesterfield and Powhatan Counties. All streams drain either directly or indirectly to the James River or Appomattox River (which itself is a tributary of the James).

#### Definition:

Watershed – All of the land area that drains to a particular point or body of water.



Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek (herein collectively referred to as the “James River Tributaries”) are listed as impaired on Virginia’s 2020 Section 305(b)/303(d) Water Quality Assessment Integrated Report (IR) due to water quality violations of the general aquatic life (benthic) standard. The impaired segments addressed in this document are listed in **Table 1-1**. The watersheds of the impaired streams are shown in **Figure 1-1**.

**Table 1-1. 2020 IR impaired segments addressed in this TMDL study.**

TMDL Watershed	305(b) Segment ID	Cause Group Code 303(d) Impairment ID	Listing Station	Year Initially Listed
Bailey Creek	VAP-G03R_BLY02A08 (1.35 mi)	G03R-02-BEN	2-BLY005.73	2014
	VAP-G03R_BLY01A98 (5.12 mi)			2014
Nuttree Branch	VAP-J17R_NUT01A06 (5.58 mi)	J17R-06-BEN	2-NUT000.62	2012
Oldtown Creek	VAP-J15R_OTC01A00 (4.22 mi)	J15R-02-BEN	2-OTC001.54	2010
	VAP-J15R_OTC01B08 (6.22 mi)	J15R-08-BEN	2-OTC005.38	2018
Proctors Creek	VAP-G01R_PCT01A06 (8.26 mi)	G01R-15-BEN	2-PCT002.46	2010
Rohoic Creek	VAP-J15R_RHC01A06 (13.45 mi)	J15R-05-BEN	2-RHC000.58	2012
Swift Creek	VAP-J17R_SFT01B98 (7.25 mi)	J17R-01-BEN	2-SFT019.02	2010
	VAP-J17R_SFT02A00 (2.88 mi)	J17R-09-BEN	2-SFT025.32	2010

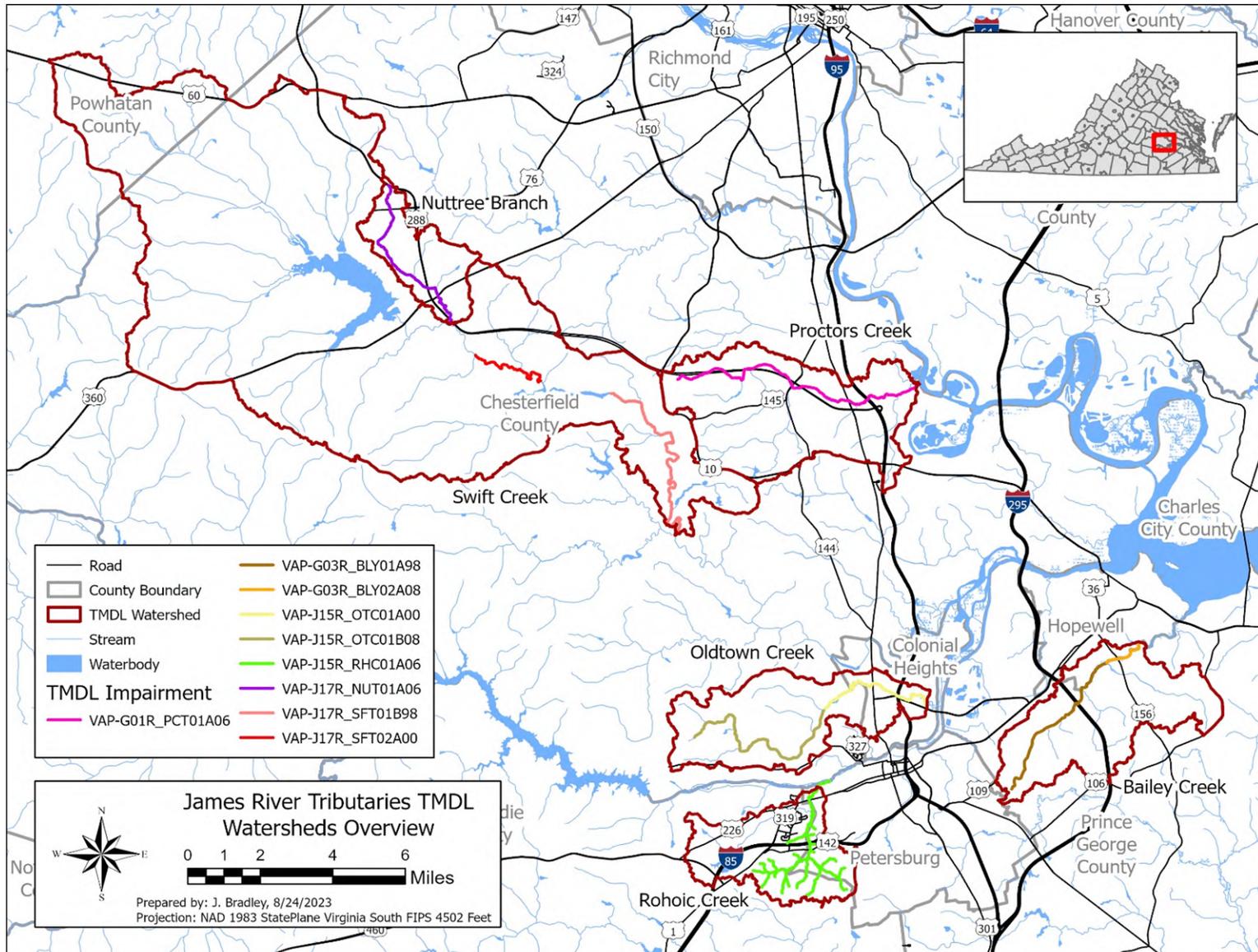


Figure 1-1. Location of the 2020 IR James River tributaries water impairments.

## **The Problem**

### ***Impaired Aquatic Life***

The Commonwealth of Virginia sets standards for all the waters in the state. One of those standards is the expectation that every stream will support a healthy and diverse community of macroinvertebrates and fish (the aquatic life designated use). The Virginia Department of Environmental Quality (VADEQ) determines whether this standard is met by monitoring the benthic macroinvertebrate community (bugs that live on the bottom of the stream) in our waterways. The health and diversity of these bugs are assessed using the Virginia Stream Condition Index (VSCI). The VSCI is a multi-metric index used to derive stream health scores ranging from 0 to 100. Scores below 60 are categorized as impaired. **Figure 1-2** shows the various monitoring stations throughout the watershed, color-coded by the average score at each site. Red and yellow symbols indicate that the streams do not support a healthy and diverse community of macroinvertebrates and fish. This shows that the various impaired streams in this study fail the aquatic life use standard, and pollutants within the watershed need to be identified and reduced to help clean up the waterway.

A benthic stressor analysis study was conducted in 2021 to determine the reason for the benthic impairments in Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek (**Appendix E**) (herein collectively referred to as the “James River Tributaries”). The study found that excess sediment was a cause of impairment across all watersheds, and excess phosphorus was determined to be an additional cause of impairment in Oldtown Creek, Rohoic Creek, and Swift Creek.

### ***Too Much Sediment***

Excess sediment was identified as a primary stressor in all study watersheds. When it rains, sediment is washed from the land surface into nearby creeks and rivers. The amount of soil that is washed off depends on how much it rains and the characteristics of the surrounding watershed. Rain falling on a construction site without sediment barriers or highly tilled cropland without a cover crop may carry a large amount of sediment to a stream. Other land types, like forests and well-maintained pasture, contribute much less sediment to waterways during rainfall events. When excess soil gets into nearby streams, it can fill in and destroy valuable habitat for aquatic macroinvertebrates that live underneath and between rocks on the bottom of the stream. Without this valuable habitat, the diversity of aquatic life in a stream may be severely limited.

### ***Too Much Phosphorus***

In addition to having too much sediment, Oldtown Creek, Rohoic Creek, and Swift Creek have too much phosphorus. Phosphorus is a nutrient that helps plants grow. Phosphorus can be found

attached to the sediment that is washed into streams and can also be found in fertilizer and manure. Just as dirt can wash off of the land surface into nearby creeks, phosphorus contained in fertilizer and manure can wash off into streams. Phosphorus can also enter streams from point or piped sources, such as effluent from wastewater treatment plants and other permitted sources. Too much phosphorus can cause excess algae to grow in a stream. When that algae dies and begins to decompose it can cause the oxygen supply in the water to dramatically decrease and limit the diversity of bugs and fish which need oxygen to survive.

## The Study

To study the problem of excess sediment and phosphorus (where applicable) in the James River Tributaries TMDL, a combination of monitoring and computer modeling was utilized. Monitoring was used to tell how much sediment and phosphorus is in the streams at any given time and how aquatic life conditions have changed over time. The computer model was used to estimate where the sediment and phosphorus are coming from and make predictions about how stream conditions would change if those sources were reduced.

For this purpose, a computer numerical model called the Generalized Watershed Loading Function model (or GWLF) was used. This model considers slope, soils, land cover, erodibility, and runoff to estimate the amount of soil and associated phosphorus eroded in the watershed and deposited in the stream. The model was calibrated against real-world flow measurements taken from a nearby stream to ensure that it was producing accurate results. The tested model was then used to estimate the sediment and phosphorus reductions that would be needed to completely restore a healthy aquatic benthic community to the impaired streams in the watershed.

### Frequently Asked Questions

#### Why use a computer model?

Sampling and testing tell you a lot about the present and the past, but nothing about the future. A computer model is a tool that can help you make predictions about the future. This is necessary to figure out how much effort is needed to clean up a stream.

#### Definition:



TMDL – Total Maximum Daily Load. This is the amount of a pollutant that a stream can receive and still meet water quality standards. The term TMDL is also used more generally to describe the state’s formal process for cleaning up polluted streams.

This report summarizes the study and sets goals for a clean-up plan. The study is called a Total Maximum Daily Load (TMDL) study because it determines the maximum amount of a pollutant that can enter a waterbody without harming the stream or the organisms living in it.

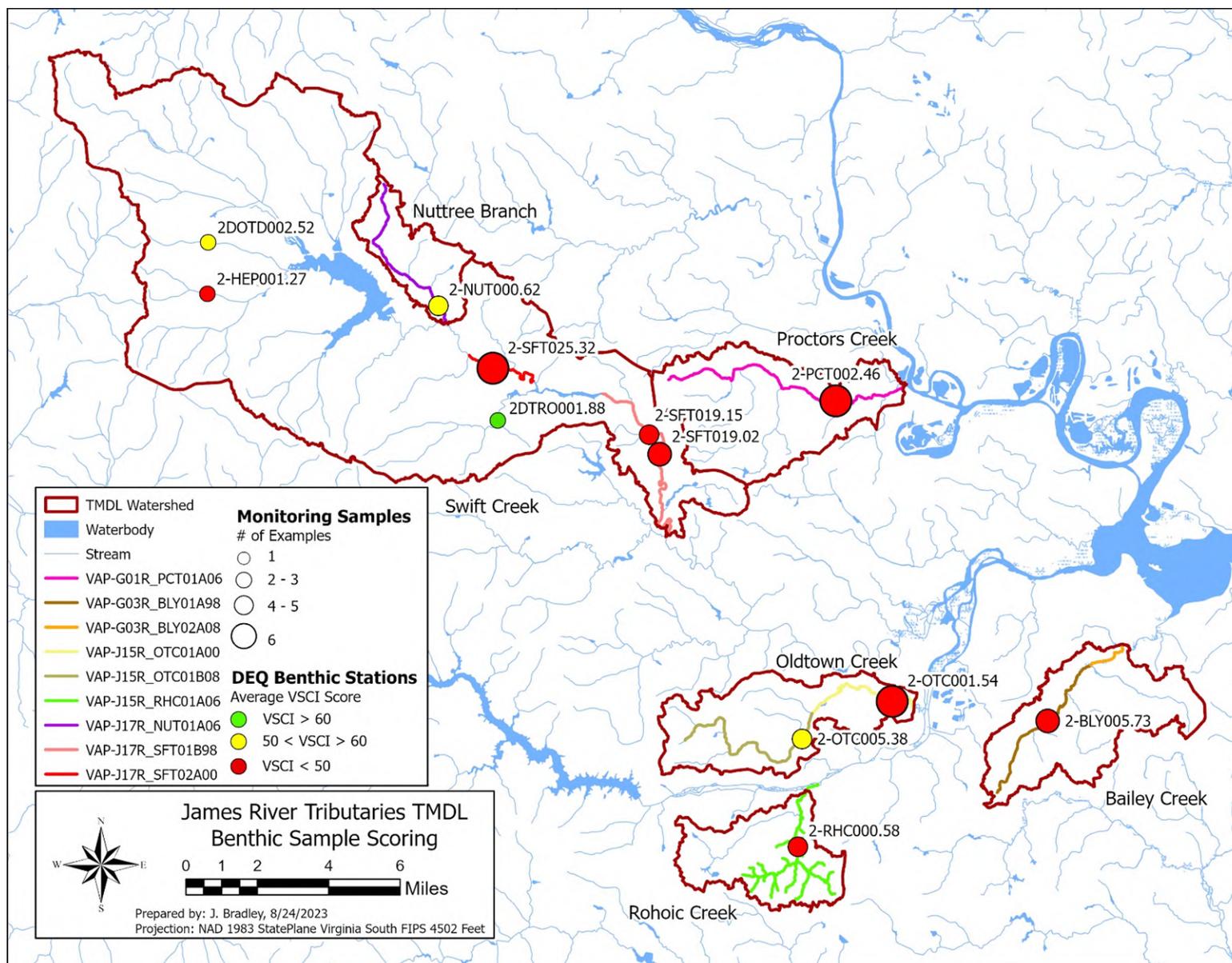


Figure 1-2. Stream health score summaries in the James River Tributaries watersheds.

## Current Conditions

The Virginia Geographic Information Network (VGIN) 2016 Virginia Land Cover Dataset (VLCD) was used to determine current land use within the watersheds, with minor modifications (discussed in **Section 3.4**). The primary land cover in each watershed in this study is forest, followed by turfgrass and urban/suburban development. Agriculture (cropland and pasture/hay) is only a small percent of the land cover in each watershed. The land cover distribution for each impaired watershed is shown in **Figure 1-3** through **Figure 1-8**.

This land cover dataset combined with an accounting of the permitted discharges, represent the major pollutant sources in the watershed. The GWLF model was used to determine the relative contribution of sources of sediment and phosphorus in the impaired watersheds. **Figure 1-3** through **Figure 1-8** show the distribution of sediment and phosphorus (where applicable) contributions from various sources in the watersheds. Permitted sources include eight (8) Municipal Separate Storm Sewer System (MS4) entities: City of Colonial Heights, City of Hopewell, City of Petersburg, Central State Hospital, Chesterfield County, Fort Lee, John Tyler Community College, and Virginia Department of Transportation (VDOT). Additionally, the watersheds include Virginia Pollutant Discharge Elimination System (VPDES) individual permits, industrial stormwater permits, concrete general permits, domestic sewage permits, construction general permits, vehicle wash permits, and non-metallic mineral mining permits (NMMM). The sediment and phosphorus loads from permitted sources were calculated based on the permit language, reported discharge data, and land cover type and area (permits are detailed in **Section 4.3.2**). Due to the largely urban/suburban nature of the study watersheds, relatively little sediment or phosphorus is sourced from agricultural land and instead pollutant loads are driven by developed land uses, streambank erosion, and permitted discharges.



### Definition:

Point Source – pollution that comes out of a pipe (like at a sewage treatment plant).

Non-point Source – pollution that does not come out of a pipe but comes generally from the landscape (usually as runoff).

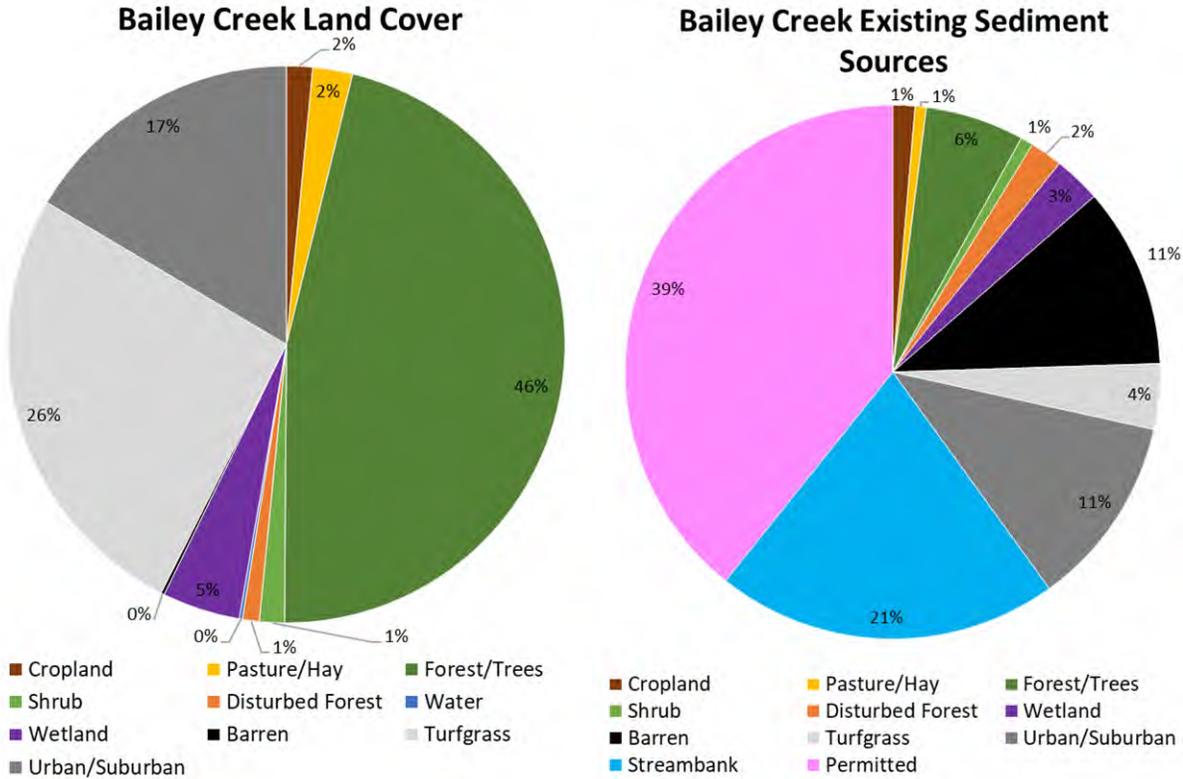


Figure 1-3. Land cover and existing source load distributions in the Bailey Creek watershed.

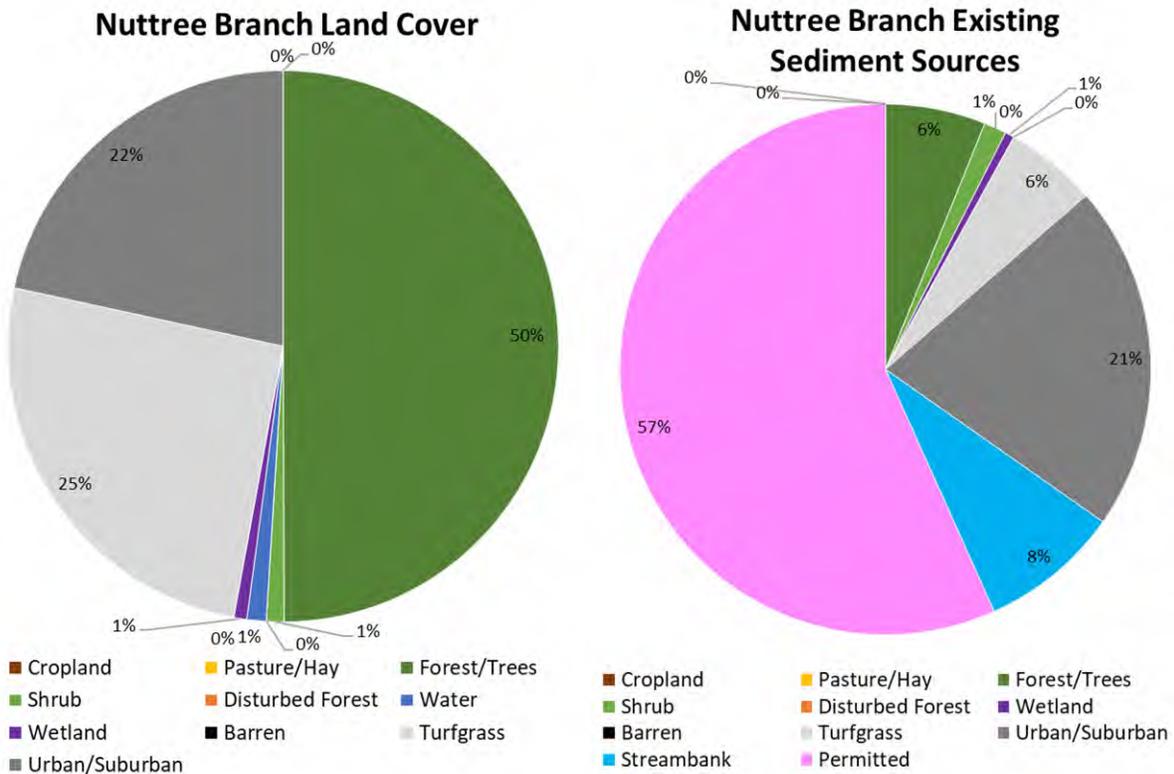


Figure 1-4. Land cover and existing source load distributions in the Nuttree Branch watershed.

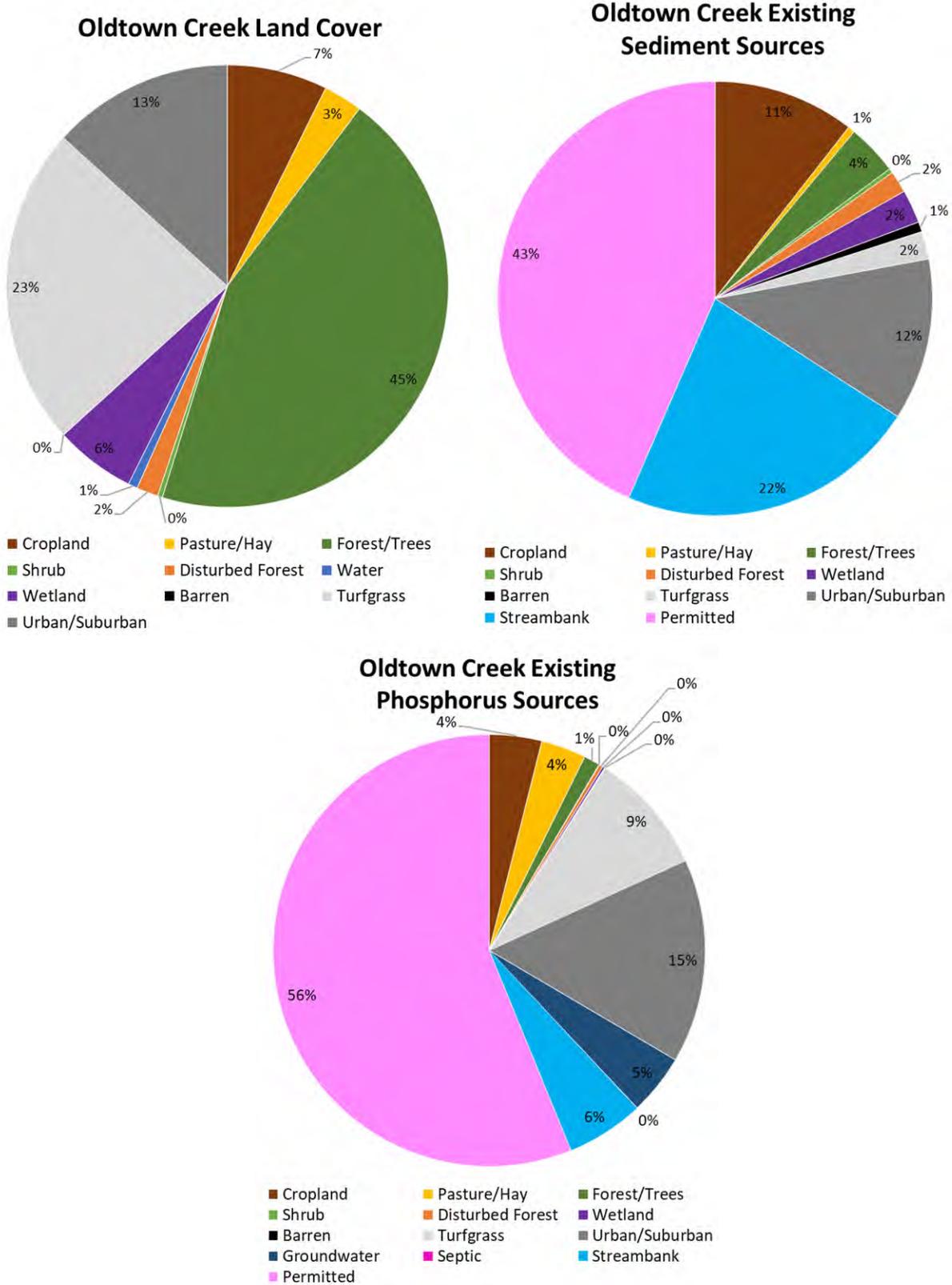


Figure 1-5. Land cover and existing source load distributions in the Oldtown Creek watershed.

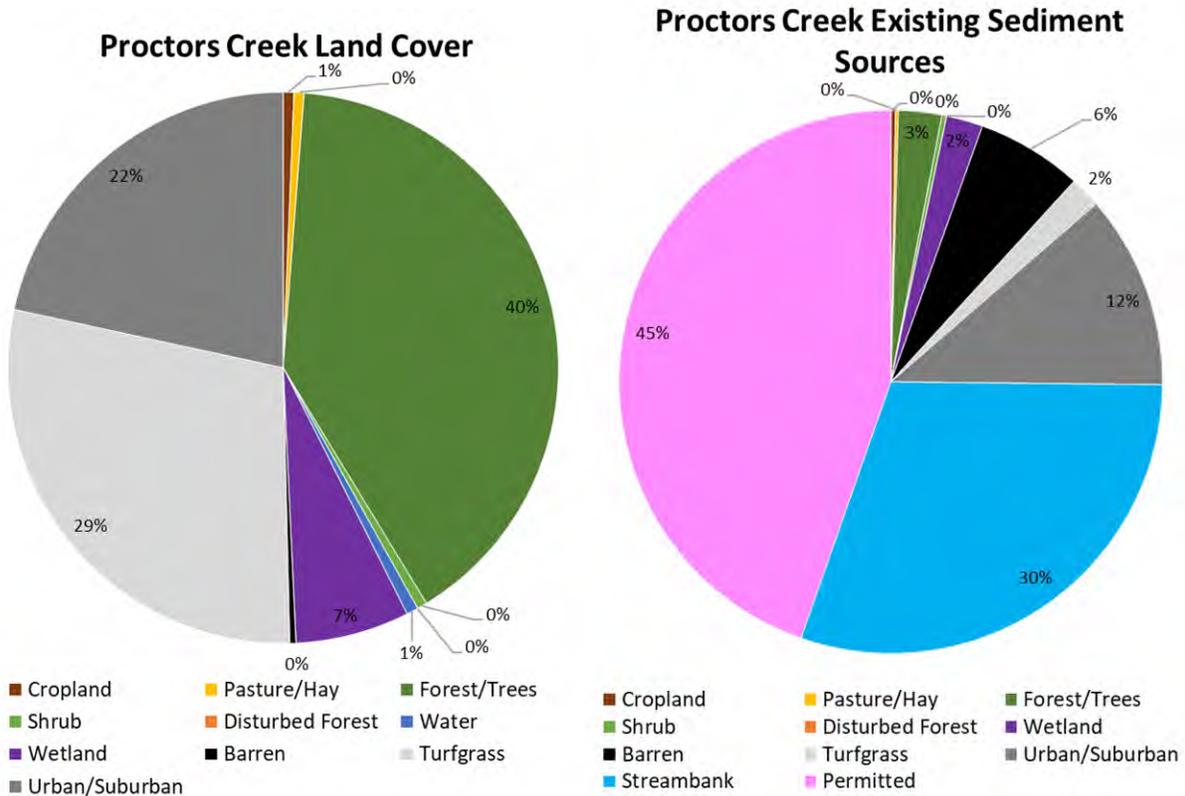


Figure 1-6. Land cover and existing source load distributions in the Proctors Creek watershed.

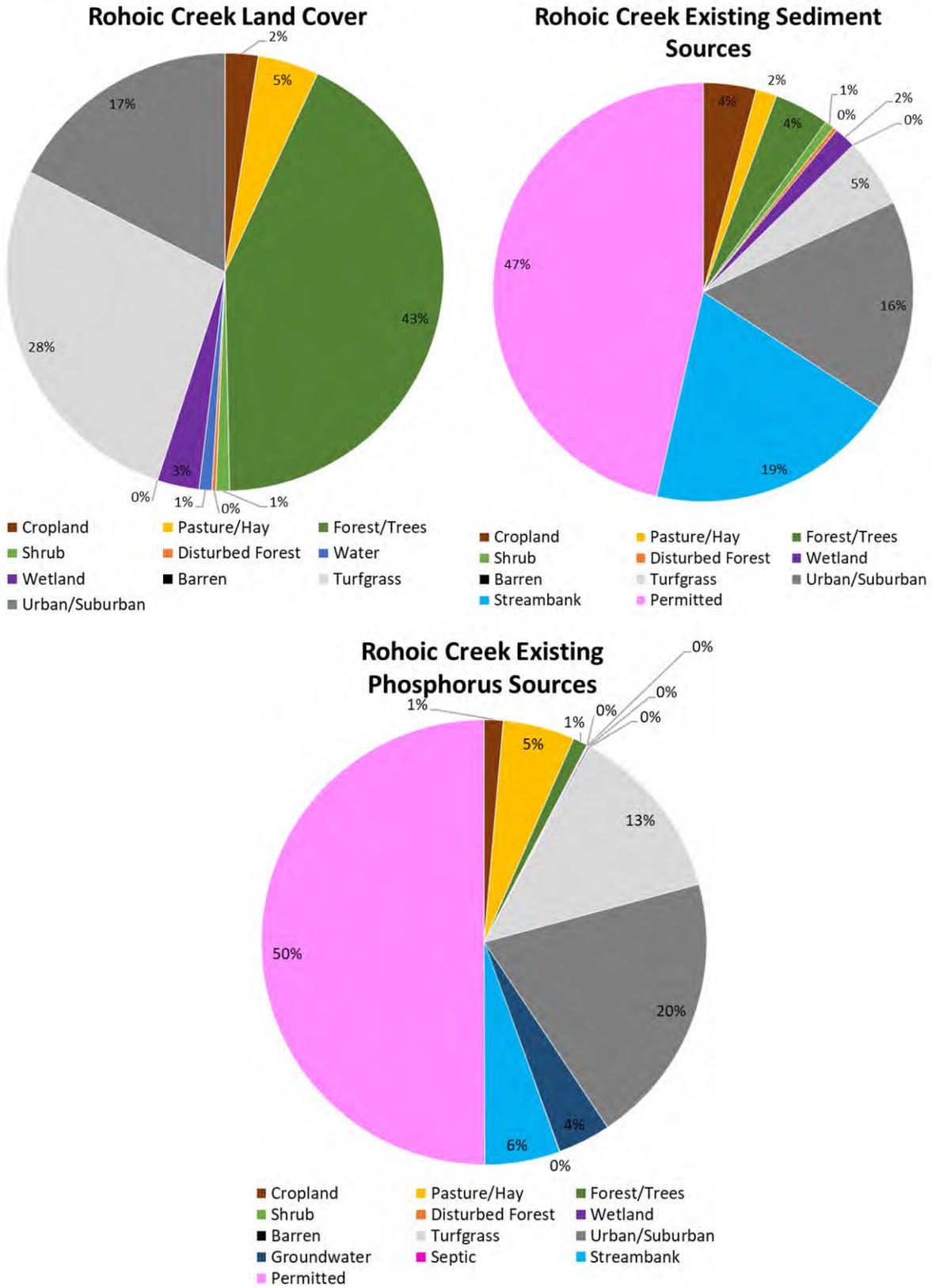


Figure 1-7. Land cover and existing source load distributions in the Rohoic Creek watershed.

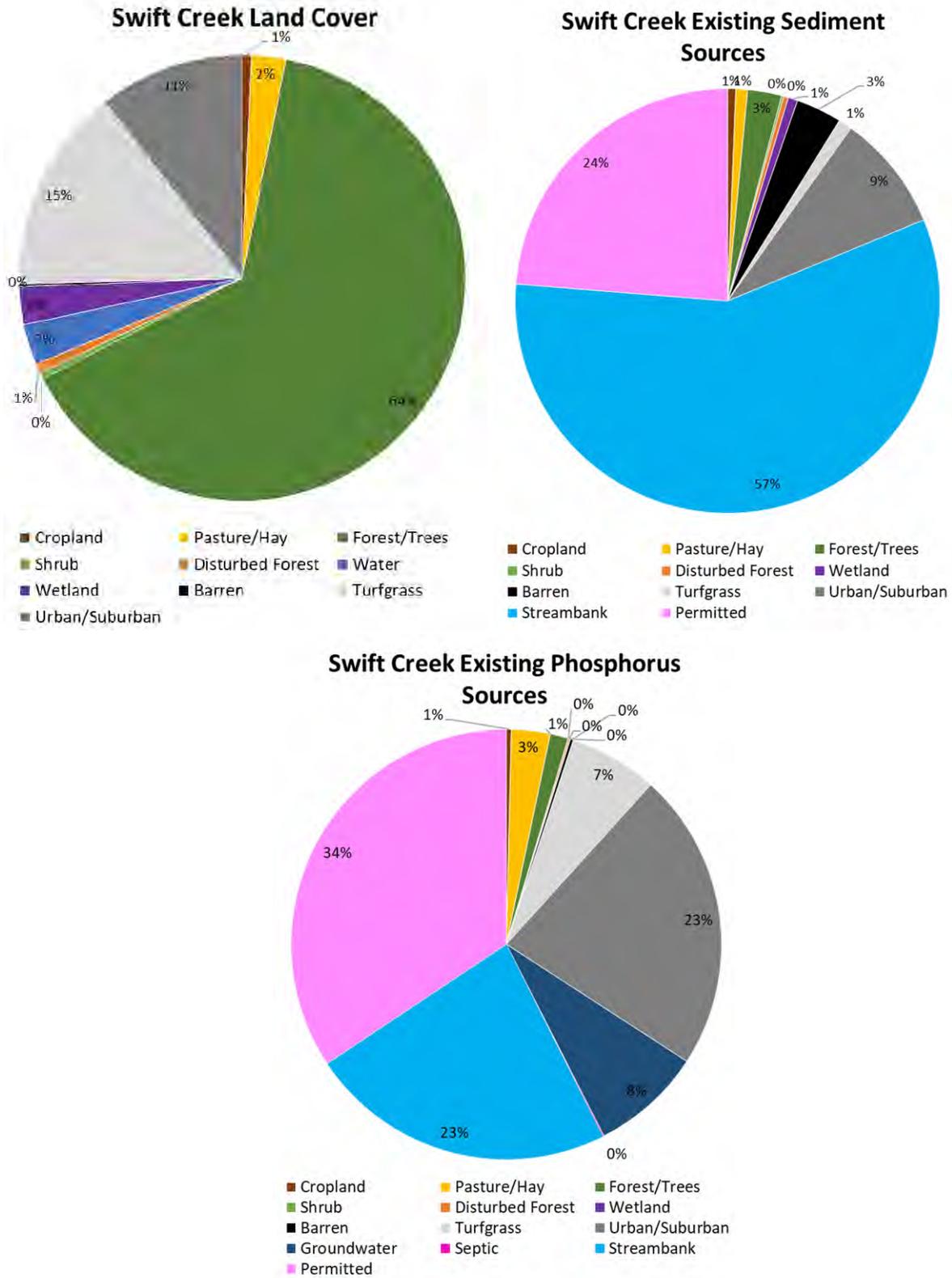


Figure 1-8. Land cover and existing source load distributions in the Swift Creek watershed.

## Future Goals (the TMDL)

After determining existing sediment and phosphorus sources, a computer model was utilized to determine necessary load reductions needed to return the stream to a healthy condition. The goal for the impaired stream segments is to establish sediment and phosphorus levels that allow for diverse and abundant aquatic life without causing an undue burden on existing entities. The reductions in sediment and phosphorus needed to meet these goals are shown in **Table 1-2** and **Table 1-3**.

**Table 1-2. Reductions in sediment needed to restore a healthy benthic community.**

Watershed	Crop, Pasture, Hay	Forest, Trees, Shrubs, Wetland	Developed Pervious and Impervious Areas, Turfgrass*	Streambank Erosion	Permitted Sources**
Bailey Creek	54.5%	0.0%	54.5%	54.5%	0.0%
Nuttree Branch	N/A	0.0%	59.9%	59.9%	0.0%
Oldtown Creek	72.3%	0.0%	72.3%	72.3%	0.0%
Proctors Creek	88.4%	0.0%	88.4%	88.4%	0.0%
Rohoic Creek	79.8%	0.0%	79.8%	79.8%	50.0%
Swift Creek	57.0%	0.0%	57.0%	57.0%	0.0%

\*Including MS4 permitted areas.

\*\*Only industrial stormwater (ISW) permit loads are reduced in Rohoic Creek.

**Table 1-3. Reductions in phosphorus needed to restore a healthy benthic community.**

Watershed	Crop, Pasture, Hay	Forest, Trees, Shrubs, Wetland	Developed Pervious and Impervious Areas, Turfgrass*	Streambank Erosion	Permitted Sources**
Oldtown Creek	76.7%	0.0%	76.7%	76.7%	0.0%
Rohoic Creek	98.8%	0.0%	98.8%	98.8%	50%
Swift Creek	73.2%	0.0%	73.2%	73.2%	0.0%

\*Including MS4 permitted areas.

\*\*Only industrial stormwater (ISW) permit loads are reduced in Rohoic Creek.

To obtain healthy sediment levels in the impaired streams, significant reductions are needed from sediment and phosphorus sources. After the recommended reductions are made, the total amount of sediment and phosphorus per year that would be entering each of these streams represent the total maximum daily load of the pollutant for each stream. **Table 1-4** to **Table 1-9** present the

annual average sediment TMDLs for sediment. **Table 1-10** to **Table 1-12** present the annual average TMDLs for phosphorus. Model results are rounded to 4 significant figures and calculated totals are rounded to 3 significant figures to reflect the accuracy of model inputs and the intended accuracy of the model results. These annual loads are converted to daily maximum loads as well, as described in **Section 6.3 (Table 1-13 to Table 1-21)**. If sediment and phosphorus loads are reduced to these amounts, healthy aquatic life should be restored in these streams.

**Table 1-4. Annual average sediment TMDL components for Bailey Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/yr TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/yr TSS)</b>	<b>Margin of Safety (MOS) (lb/yr TSS)</b>	<b>Total Maximum Daily Load (TMDL) (lb/yr TSS)</b>	<b>Existing Load (lb/yr TSS)</b>	<b>Overall Reduction (%)</b>
<b>Bailey Creek</b> (VAP-G03R_BLY02A08, VAP-G03R_BLY01A98)	<b>424,000</b>	<b>656,400</b>	<b>119,600</b>	<b>1,200,000</b>	2,130,000	43.7%
<i>VA0059161</i>	5,245					
<i>Concrete Facility Permits</i>	1,945					
<i>ISW Permits</i>	43,060					
<i>MS4 Permits</i>	316,500					
<i>Construction Permits</i>	33,500					
<i>Future Growth (2% of TMDL)</i>	23,930					

**Table 1-5. Annual average sediment TMDL components for Nuttree Branch.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/yr TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/yr TSS)</b>	<b>Margin of Safety (MOS) (lb/yr TSS)</b>	<b>Total Maximum Daily Load (TMDL) (lb/yr TSS)</b>	<b>Existing Load (lb/yr TSS)</b>	<b>Overall Reduction (%)</b>
<b>Nuttree Branch</b> (VAP-J17R_NUT01A06)	<b>303,000</b>	<b>177,000</b>	<b>53,280</b>	<b>532,000</b>	861,000	38.2%
<i>NMMM Permits</i>	45,700					
<i>Concrete Facility Permits</i>	326					
<i>ISW Permits</i>	8,888					
<i>MS4 Permits</i>	107,300					
<i>Construction Permits</i>	129,600					
<i>Future Growth (2% of TMDL)</i>	10,700					

\* Any apparent differences in calculated values are due to rounding. Model results were rounded to 4 significant figures and calculated totals of those results were rounded to 3 significant figures.

**Table 1-6. Annual average sediment TMDL components for Oldtown Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/yr TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/yr TSS)</b>	<b>Margin of Safety (MOS) (lb/yr TSS)</b>	<b>Total Maximum Daily Load (TMDL) (lb/yr TSS)</b>	<b>Existing Load (lb/yr TSS)</b>	<b>Overall Reduction (%)</b>
<b>Oldtown Creek</b> (VAP-J15R_OTC01A00 VAP-J15R_OTC01B08)	<b>253,000</b>	<b>308,500</b>	<b>62,520</b>	<b>624,000</b>	1,590,000	60.8%
<i>MS4 Permits</i>	<i>159,700</i>					
<i>Construction Permits</i>	<i>80,810</i>					
<i>Future Growth (2% of TMDL)</i>	<i>12,500</i>					

**Table 1-7. Annual average sediment TMDL components for Proctors Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/yr TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/yr TSS)</b>	<b>Margin of Safety (MOS) (lb/yr TSS)</b>	<b>Total Maximum Daily Load (TMDL) (lb/yr TSS)</b>	<b>Existing Load (lb/yr TSS)</b>	<b>Overall Reduction (%)</b>
<b>Proctors Creek</b> (VAP-G01R_PCT01A06)	<b>573,000</b>	<b>345,000</b>	<b>102,100</b>	<b>1,020,000</b>	3,290,000	69.0%
<i>Concrete Facility Permits</i>	<i>1,188</i>					
<i>ISW Permits</i>	<i>64,760</i>					
<i>Vehicle Wash Permits</i>	<i>55</i>					
<i>MS4 Permits</i>	<i>112,900</i>					
<i>Construction Permits</i>	<i>373,600</i>					
<i>Future Growth (2% of TMDL)</i>	<i>20,420</i>					

\* Any apparent differences in calculated values are due to rounding. Model results were rounded to 4 significant figures and calculated totals of those results were rounded to 3 significant figures.

**Table 1-8. Annual average sediment TMDL components for Rohoic Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/yr TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/yr TSS)</b>	<b>Margin of Safety (MOS) (lb/yr TSS)</b>	<b>Total Maximum Daily Load (TMDL) (lb/yr TSS)</b>	<b>Existing Load (lb/yr TSS)</b>	<b>Overall Reduction (%)</b>
<b>Rohoic Creek (VAP-J15R_RHC01A06)</b>	<b>377,000</b>	<b>206,000</b>	<b>64,870</b>	<b>648,000</b>	1,360,000	52.4%
<i>NMMM Permits</i>	127,900					
<i>Concrete Facility Permits</i>	4,586					
<i>ISW Permits</i>	57,800					
<i>MS4 Permits</i>	43,510					
<i>Construction Permits</i>	130,500					
<i>Future Growth (2% of TMDL)</i>	12,970					

**Table 1-9. Annual average sediment TMDL components for Swift Creek (Nuttree Branch represented within the LA).\***

<b>Impairment</b>	<b>Allocated Permitted Point Sources (WLA) (lb/yr TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/yr TSS)</b>	<b>Margin of Safety (MOS) (lb/yr TSS)</b>	<b>Total Maximum Daily Load (TMDL) (lb/yr TSS)</b>	<b>Existing Load (lb/yr TSS)</b>	<b>Overall Reduction (%)</b>
<b>Swift Creek (VAP-J17R_SFT01B98, VAP-J17R_SFT02A00)</b>	<b>2,870,000</b>	<b>7,030,000</b>	<b>1,099,000</b>	<b>11,000,000</b>	20,100,000	45.3%
<i>VA0006254</i>	91,380					
<i>VA0023426</i>	8,910					
<i>NMMM Permits</i>	137,100					
<i>ISW Permits</i>	101,700					
<i>Domestic Sewage Permits</i>	366					
<i>MS4 Permits</i>	993,200					
<i>Construction Permits</i>	1,314,000					
<i>Future Growth (2% of TMDL)</i>	219,800					

\* Any apparent differences in calculated values are due to rounding. Model results were rounded to 4 significant figures and calculated totals of those results were rounded to 3 significant figures.

**Table 1-10. Annual average phosphorus TMDL components for Oldtown Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/yr TP)</b>	<b>Allocated Nonpoint Sources (LA) (lb/yr TP)</b>	<b>Margin of Safety (MOS) (lb/yr TP)</b>	<b>Total Maximum Daily Load (TMDL) (lb/yr TP)</b>	<b>Existing Load (lb/yr TP)</b>	<b>Overall Reduction (%)</b>
<b>Oldtown Creek</b> (VAP-J15R_OTC01A00, VAP-J15R_OTC01B08)	<b>404</b>	<b>409.5</b>	<b>90.5</b>	<b>904</b>	2,720	66.8%
<i>MS4 Permits</i>	<i>327.7</i>					
<i>Construction Permits</i>	<i>58.2</i>					
<i>Future Growth (2% of TMDL)</i>	<i>18.1</i>					

**Table 1-11. Annual average phosphorus TMDL components for Rohoic Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/yr TP)</b>	<b>Allocated Nonpoint Sources (LA) (lb/yr TP)</b>	<b>Margin of Safety (MOS) (lb/yr TP)</b>	<b>Total Maximum Daily Load (TMDL) (lb/yr TP)</b>	<b>Existing Load (lb/yr TP)</b>	<b>Overall Reduction (%)</b>
<b>Rohoic Creek</b> (VAP-J15R_RHC01A06)	<b>426</b>	<b>163</b>	<b>65</b>	<b>654</b>	2,330	71.0%
<i>NMMM Permits</i>	<i>85.3</i>					
<i>Concrete Facility Permits</i>	<i>31.0</i>					
<i>ISW Permits</i>	<i>197.0</i>					
<i>MS4 Permits</i>	<i>6.3</i>					
<i>Construction Permits</i>	<i>94.0</i>					
<i>Future Growth (2% of TMDL)</i>	<i>13.1</i>					

\* Any apparent differences in calculated values are due to rounding. Model results were rounded to 4 significant figures and calculated totals of those results were rounded to 3 significant figures.

**Table 1-12. Annual average phosphorus TMDL components for Swift Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/yr TP)</b>	<b>Allocated Nonpoint Sources (LA) (lb/yr TP)</b>	<b>Margin of Safety (MOS) (lb/yr TP)</b>	<b>Total Maximum Daily Load (TMDL) (lb/yr TP)</b>	<b>Existing Load (lb/yr TP)</b>	<b>Overall Reduction (%)</b>
<b>Swift Creek</b> (VAP-J17R_SFT01B98, VAP-J17R_SFT02A00)	<b>3,145</b>	<b>4,700</b>	<b>873</b>	<b>8,730</b>	20,200	56.8%
<i>VA0006254</i>	<i>9.6</i>					
<i>VA0023426</i>	<i>46.0</i>					
<i>NMMM Permits</i>	<i>121.8</i>					
<i>ISW Permits</i>	<i>377.1</i>					
<i>Domestic Sewage Permits</i>	<i>17.2</i>					
<i>MS4 Permits</i>	<i>1,359</i>					
<i>Construction Permits</i>	<i>1,040</i>					
<i>Future Growth (2% of TMDL)</i>	<i>174.6</i>					

**Table 1-13. Maximum ‘daily’ sediment loads and components for Bailey Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/day TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/day TSS)</b>	<b>Margin of Safety (MOS) (lb/day TSS)</b>	<b>Maximum Daily Load (MDL) (lb/day TSS)</b>
<b>Bailey Creek</b> (VAP-G03R_BLY02A08, VAP-G03R_BLY01A98)	<b>1,161</b>	<b>3,038</b>	<b>467</b>	<b>4,665</b>
<i>VA0059161</i>	<i>14.4</i>			
<i>Concrete Facility Permits</i>	<i>5.3</i>			
<i>ISW Permits</i>	<i>117.9</i>			
<i>MS4 Permits</i>	<i>866.6</i>			
<i>Construction Permits</i>	<i>91.7</i>			
<i>Future Growth (2% of TMDL)</i>	<i>65.5</i>			

\* Any apparent differences in calculated values are due to rounding. Model results were rounded to 4 significant figures and calculated totals of those results were rounded to 3 significant figures.

**Table 1-14. Maximum ‘daily’ sediment loads and components for Nuttree Branch.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/day TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/day TSS)</b>	<b>Margin of Safety (MOS) (lb/day TSS)</b>	<b>Maximum Daily Load (MDL) (lb/day TSS)</b>
<b>Nuttree Branch</b> (VAP-J17R_NUT01A06)	<b>830</b>	<b>1,097</b>	<b>214</b>	<b>2,141</b>
<i>NMMM Permits</i>	<i>125.1</i>			
<i>Concrete Facility Permits</i>	<i>0.9</i>			
<i>ISW Permits</i>	<i>24.3</i>			
<i>MS4 Permits</i>	<i>293.8</i>			
<i>Construction Permits</i>	<i>355</i>			
<i>Future Growth (2% of TMDL)</i>	<i>29</i>			

**Table 1-15. Maximum ‘daily’ sediment loads and components for Oldtown Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/day TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/day TSS)</b>	<b>Margin of Safety (MOS) (lb/day TSS)</b>	<b>Maximum Daily Load (MDL) (lb/day TSS)</b>
<b>Oldtown Creek</b> (VAP-J15R_OTC01A00 VAP-J15R_OTC01B08)	<b>693</b>	<b>1,491</b>	<b>243</b>	<b>2,426</b>
<i>MS4 Permits</i>	<i>437.2</i>			
<i>Construction Permits</i>	<i>221.3</i>			
<i>Future Growth (2% of TMDL)</i>	<i>34.2</i>			

**Table 1-16. Maximum ‘daily’ sediment loads and components for Proctors Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/day TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/day TSS)</b>	<b>Margin of Safety (MOS) (lb/day TSS)</b>	<b>Maximum Daily Load (MDL) (lb/day TSS)</b>
<b>Proctors Creek</b> (VAP-G01R_PCT01A06)	<b>1,569</b>	<b>2,025</b>	<b>399</b>	<b>3,994</b>
<i>Concrete Facility Permits</i>	<i>3.3</i>			
<i>ISW Permits</i>	<i>177.3</i>			
<i>Vehicle Wash Permits</i>	<i>0.2</i>			
<i>MS4 Permits</i>	<i>309.1</i>			
<i>Construction Permits</i>	<i>1,023</i>			
<i>Future Growth (2% of TMDL)</i>	<i>56</i>			

\* Any apparent differences in calculated values are due to rounding. Model results were rounded to 4 significant figures and calculated totals of those results were rounded to 3 significant figures.

**Table 1-17. Maximum ‘daily’ sediment loads and components for Rohoic Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/day TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/day TSS)</b>	<b>Margin of Safety (MOS) (lb/day TSS)</b>	<b>Maximum Daily Load (MDL) (lb/day TSS)</b>
<b>Rohoic Creek</b> (VAP-J15R_RHC01A06)	<b>1,032</b>	<b>1,235</b>	<b>252</b>	<b>2,519</b>
<i>NMMM Permits</i>	<i>350.2</i>			
<i>Concrete Facility Permits</i>	<i>12.6</i>			
<i>ISW Permits</i>	<i>158.3</i>			
<i>MS4 Permits</i>	<i>119.1</i>			
<i>Construction Permits</i>	<i>357</i>			
<i>Future Growth (2% of TMDL)</i>	<i>36</i>			

**Table 1-18. Maximum ‘daily’ sediment loads and components for Swift Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/day TSS)</b>	<b>Allocated Nonpoint Sources (LA) (lb/day TSS)</b>	<b>Margin of Safety (MOS) (lb/day TSS)</b>	<b>Maximum Daily Load (MDL) (lb/day TSS)</b>
<b>Swift Creek</b> (VAP-J17R_SFT01B98, VAP-J17R_SFT02A00)	<b>7,858</b>	<b>30,632</b>	<b>4,277</b>	<b>42,766</b>
<i>VA0006254</i>	<i>250.2</i>			
<i>VA0023426</i>	<i>24.4</i>			
<i>NMMM Permits</i>	<i>375.4</i>			
<i>ISW Permits</i>	<i>278.4</i>			
<i>Domestic Sewage Permits</i>	<i>1.0</i>			
<i>MS4 Permits</i>	<i>2,719.3</i>			
<i>Construction Permits</i>	<i>3,598</i>			
<i>Future Growth (2% of TMDL)</i>	<i>602</i>			

**Table 1-19. Maximum ‘daily’ phosphorus loads and components for Oldtown Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/day TP)</b>	<b>Allocated Nonpoint Sources (LA) (lb/day TP)</b>	<b>Margin of Safety (MOS) (lb/day TP)</b>	<b>Maximum Daily Load (MDL) (lb/day TP)</b>
<b>Oldtown Creek</b> (VAP-J15R_OTC01A00 VAP-J15R_OTC01B08)	<b>1.1</b>	<b>2.3</b>	<b>0.4</b>	<b>3.8</b>
<i>MS4 Permits</i>	<i>0.9</i>			
<i>Construction Permits</i>	<i>0.2</i>			
<i>Future Growth (2% of TMDL)</i>	<i>0.05</i>			

\* Any apparent differences in calculated values are due to rounding. Model results were rounded to 4 significant figures and calculated totals of those results were rounded to 3 significant figures.

**Table 1-20. Maximum ‘daily’ phosphorus loads and components for Rohoic Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/day TP)</b>	<b>Allocated Nonpoint Sources (LA) (lb/day TP)</b>	<b>Margin of Safety (MOS) (lb/day TP)</b>	<b>Maximum Daily Load (MDL) (lb/day TP)</b>
<b>Rohoic Creek</b> (VAP-J15R_RHC01A06)	<b>1.2</b>	<b>1.4</b>	<b>0.3</b>	<b>2.8</b>
<i>NMMM Permits</i>	<i>0.2</i>			
<i>Concrete Facility Permits</i>	<i>0.1</i>			
<i>ISW Permits</i>	<i>0.5</i>			
<i>MS4 Permits</i>	<i>0.0</i>			
<i>Construction Permits</i>	<i>0.3</i>			
<i>Future Growth (2% of TMDL)</i>	<i>0.04</i>			

**Table 1-21. Maximum ‘daily’ phosphorus loads and components for Swift Creek.\***

<b>Impairment</b>	<b>Allocated Point Sources (WLA) (lb/day TP)</b>	<b>Allocated Nonpoint Sources (LA) (lb/day TP)</b>	<b>Margin of Safety (MOS) (lb/day TP)</b>	<b>Maximum Daily Load (MDL) (lb/day TP)</b>
<b>Swift Creek</b> (VAP-J17R_SFT01B98, VAP-J17R_SFT02A00)	<b>8.6</b>	<b>24.0</b>	<b>3.6</b>	<b>36.3</b>
<i>VA0006254</i>	<i>0.03</i>			
<i>VA0023426</i>	<i>0.1</i>			
<i>NMMM Permits</i>	<i>0.3</i>			
<i>ISW Permits</i>	<i>1.0</i>			
<i>Domestic Sewage Permits</i>	<i>0.05</i>			
<i>MS4 Permits</i>	<i>3.7</i>			
<i>Construction Permits</i>	<i>2.8</i>			
<i>Future Growth (2% of TMDL)</i>	<i>0.5</i>			

### ***Allocation Scenarios***

There are many ways to reduce pollutants to reach TMDL goals. Several versions of these reduction plans, or allocation scenarios, were developed. These were presented to the Technical Advisory Committee which determined that Scenario 1 was preferred for each watershed (see **Table 1-22** through **Table 1-30**) . Model results were rounded to four significant figures, and calculated totals of those results were rounded to three significant figures.

\* Any apparent differences in calculated values are due to rounding. Model results were rounded to 4 significant figures and calculated totals of those results were rounded to 3 significant figures.

**Table 1-22. Allocation scenarios for Bailey Creek sediment loads.**

Bailey Creek Watershed		Scenario 1 (preferred)		Scenario 2		Scenario 3	
Source	Existing TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)
Cropland	26,620	54.5	12,110	40.8	15,760	77.1	6,096
Hay	6,796	54.5	3,092	40.8	4,024	77.1	1,556
Pasture	6,592	54.5	2,999	40.8	3,902	77.1	1,510
Forest	52,790	-	52,790	-	52,790	-	52,790
Trees	65,790	-	65,790	-	65,790	-	65,790
Shrub	15,240	-	15,240	-	15,240	-	15,240
Harvested	38,880	54.5	17,690	40.8	23,020	77.1	8,904
Wetland	56,730	-	56,730	-	56,730	-	56,730
Barren	216,700	54.5	98,610	60.0	86,690	45.5	118,100
Turfgrass	78,630	54.5	35,780	60.0	31,450	45.5	42,850
Developed Pervious	10,940	54.5	4,975	60.0	4,374	45.5	5,960
Developed Impervious	219,200	54.5	99,720	60.0	87,660	45.5	119,400
Streambank Erosion	410,600	54.5	186,800	40.8	243,100	77.1	94,020
VA0059161	5,245	-	5,245	-	5,245	-	5,245
Concrete Facility Permits	1,945	-	1,945	-	1,945	-	1,945
ISW Permits	43,060	-	43,060	-	43,060	-	43,060
MS4	695,700	54.5	316,500	60.0	278,300	45.5	379,100
Construction Permits	33,500	-	33,500	-	33,500	-	33,500
Future Growth (2%)	23,930	-	23,930	-	23,930	-	23,930
MOS (10%)	119,600	-	119,600	-	119,600	-	119,600
<b>TOTAL</b>	<b>2,130,000</b>	<b>43.7</b>	<b>1,200,000</b>	<b>43.7</b>	<b>1,200,000</b>	<b>43.7</b>	<b>1,200,000</b>

**Table 1-23. Allocation scenarios for Nuttree Branch sediment loads.**

Nuttree Branch Watershed		Scenario 1 (preferred)		Scenario 2		Scenario 3	
Source	Existing TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)
Cropland	-	-	-	-	-	-	-
Hay	-	-	-	-	-	-	-
Pasture	-	-	-	-	-	-	-
Forest	16,410	-	16,410	-	16,410	-	16,410
Trees	32,270	-	32,270	-	32,270	-	32,270
Shrub	10,830	-	10,830	-	10,830	-	10,830
Harvested	-	-	-	-	-	-	-
Wetland	4,520	-	4,520	-	4,520	-	4,520
Barren	-	-	-	-	-	-	-
Turfgrass	44,640	59.9	17,900	68.4	14,110	62.7	16,650
Developed Pervious	3,547	59.9	1,422	68.4	1,121	62.7	1,323
Developed Impervious	164,700	59.9	66,040	68.4	52,040	62.7	61,430
Streambank Erosion	68,130	59.9	27,320	-	68,130	40.0	40,880
NMMM Permits	45,690	-	45,690	-	45,690	-	45,690
Concrete Facility Permits	326	-	326	-	326	-	326
ISW Permits	8,888	-	8,888	-	8,888	-	8,888
MS4	267,500	59.9	107,300	68.4	84,550	62.7	99,800
Construction Permits	129,600	-	129,600	-	129,600	-	129,600
Future Growth (2%)	10,660	-	10,660	-	10,660	-	10,660
MOS (10%)	53,280	-	53,280	-	53,280	-	53,280
<b>TOTAL</b>	<b>861,000</b>	<b>38.2</b>	<b>532,000</b>	<b>38.2</b>	<b>532,000</b>	<b>38.1</b>	<b>533,000</b>

**Table 1-24. Allocation scenarios for Oldtown Creek sediment loads.**

Oldtown Creek Watershed		Scenario 1 (preferred)		Scenario 2		Scenario 3	
Source	Existing TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)
Cropland	159,200	72.3	44,090	40.0	95,510	81.5	29,450
Hay	6,105	72.3	1,691	40.0	3,663	81.5	1,129
Pasture	1,690	72.3	468	40.0	1,014	81.5	313
Forest	37,250	-	37,250	-	37,250	-	37,250
Trees	19,720	-	19,720	-	19,720	-	19,720
Shrub	5,024	-	5,024	-	5,024	-	5,024
Harvested	24,670	72.3	6,834	40.0	14,800	81.5	4,564
Wetland	37,550	-	37,550	-	37,550	-	37,550
Barren	11,290	72.3	3,127	77.7	2,517	81.5	2,088
Turfgrass	31,170	72.3	8,635	77.7	6,952	81.5	5,767
Developed Pervious	3,218	72.3	891	77.7	718	81.5	595
Developed Impervious	179,100	72.3	49,620	77.7	39,940	81.5	33,140
Streambank Erosion	337,800	72.3	93,580	77.7	75,340	45.0	185,800
MS4	576,600	72.3	159,700	77.7	128,600	81.5	106,700
Construction Permits	80,810	-	80,810	-	80,810	-	80,810
Future Growth (2%)	12,500	-	12,500	-	12,500	-	12,500
MOS (10%)	62,520	-	62,520	-	62,520	-	62,520
<b>TOTAL</b>	<b>1,590,000</b>	<b>60.8</b>	<b>624,000</b>	<b>60.8</b>	<b>624,000</b>	<b>60.7</b>	<b>625,000</b>

**Table 1-25. Allocation scenarios for Proctors Creek sediment loads.**

Proctors Creek Watershed		Scenario 1 (preferred)		Scenario 2		Scenario 3	
Source	Existing TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)
Cropland	8,824	88.4	1,024	-	8,824	50.0	4,412
Hay	2,111	88.4	245	-	2,111	50.0	1,055
Pasture	3,043	88.4	353	-	3,043	50.0	1,521
Forest	36,460	-	36,460	-	36,460	-	36,460
Trees	45,160	-	45,160	-	45,160	-	45,160
Shrub	8,735	-	8,735	-	8,735	-	8,735
Harvested	-	-	-	-	-	-	-
Wetland	68,880	-	68,880	-	68,880	-	68,880
Barren	199,600	88.4	23,160	88.9	22,160	88.6	22,760
Turfgrass	58,680	88.4	6,807	88.9	6,514	88.6	6,690
Developed Pervious	4,151	88.4	482	88.9	461	88.6	473
Developed Impervious	361,100	88.4	41,880	88.9	40,080	88.6	41,160
Streambank Erosion	955,900	88.4	110,900	88.9	106,100	88.6	109,000
Concrete Facility Permits	1,188	-	1,188	-	1,188	-	1,188
Vehicle Wash Permits	55	-	55	-	55	-	55
ISW Permits	64,760	-	64,760	-	64,760	-	64,760
MS4	973,100	88.4	112,900	88.9	108,000	88.6	110,900
Construction Permits	373,600	-	373,600	-	373,600	-	373,600
Future Growth (2%)	20,420	-	20,420	-	20,420	-	20,420
MOS (10%)	102,100	-	102,100	-	102,100	-	102,100
<b>TOTAL</b>	<b>3,290,000</b>	<b>69.0</b>	<b>1,020,000</b>	<b>69.0</b>	<b>1,020,000</b>	<b>69.0</b>	<b>1,020,000</b>

**Table 1-26. Allocation scenarios for Rohoic Creek sediment loads.**

Rohoic Creek Watershed		Scenario 1 (preferred)		Scenario 2		Scenario 3	
Source	Existing TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)
Cropland	52,140	79.8	10,530	77.3	11,840	80.0	10,430
Hay	16,410	79.8	3,314	77.3	3,724	80.0	3,281
Pasture	4,153	79.8	839	77.3	943	80.0	831
Forest	22,270	-	22,270	-	22,270	-	22,270
Trees	31,910	-	31,910	-	31,910	-	31,910
Shrub	9,145	-	9,145	-	9,145	-	9,145
Harvested	4,129	79.8	834	77.3	937	80.0	826
Wetland	21,340	-	21,340	-	21,340	-	21,340
Barren	-	-	-	-	-	-	-
Turfgrass	68,250	79.8	13,790	80.0	13,650	79.6	13,920
Developed Pervious	9,356	79.8	1,890	80.0	1,871	79.6	1,909
Developed Impervious	198,800	79.8	40,160	80.0	39,760	79.6	40,560
Streambank Erosion	247,200	79.8	49,930	80.0	49,430	80.0	49,430
NMMM Permits	127,900	-	127,900	-	127,900	-	127,900
Concrete Facility Permits	4,586	-	4,586	-	4,586	-	4,586
ISW Permits	115,600	50.0	57,800	50.0	57,800	50.0	57,800
MS4	215,400	79.8	43,510	80.0	43,080	79.6	43,950
Construction Permits	130,500	-	130,500	-	130,500	-	130,500
Future Growth (2%)	12,970	-	12,970	-	12,970	-	12,970
MOS (10%)	64,870	-	64,870	-	64,870	-	64,870
<b>TOTAL</b>	<b>1,360,000</b>	<b>52.4</b>	<b>648,000</b>	<b>52.3</b>	<b>649,000</b>	<b>52.4</b>	<b>648,000</b>

**Table 1-27. Allocation scenarios for Swift Creek sediment loads.**

Swift Creek Watershed		Scenario 1 (preferred)		Scenario 2		Scenario 3		Scenario 4	
Source	Existing TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)	Reduction (%)	Allocation TSS (lb/yr)
Cropland	119,500	57.0	51,390	39.6	72,180	83.2	20,080	-	119,500
Hay	26,210	57.0	11,270	39.6	15,830	83.2	4,404	-	26,210
Pasture	144,700	57.0	62,210	39.6	87,380	83.2	24,310	-	144,700
Forest	305,700	-	305,700	-	305,700	-	305,700	-	305,700
Trees	142,300	-	142,300	-	142,300	-	142,300	-	142,300
Shrub	19,860	-	19,860	-	19,860	-	19,860	-	19,860
Harvested	70,200	57.0	30,190	39.6	42,400	83.2	11,790	-	70,200
Wetland	134,300	-	134,300	-	134,300	-	134,300	-	134,300
Barren	668,000	57.0	287,200	39.6	403,500	83.2	112,200	58.4	277,900
Turfgrass	155,500	57.0	66,860	39.6	93,910	83.2	26,120	58.4	64,680
Developed Pervious	20,960	57.0	9,015	39.6	12,660	83.2	3,522	58.4	8,721
Developed Impervious	1,517,000	57.0	652,100	39.6	916,000	83.2	254,800	58.4	630,900
Streambank Erosion	10,970,000	57.0	4,717,000	65.0	3,839,000	45.0	6,033,000	58.4	4,563,000
VA0006254	91,380	-	91,380	-	91,380	-	91,380	-	91,380
VA0023426	8,910	-	8,910	-	8,910	-	8,910	-	8,910
NMMM Permits	137,072	-	137,072	-	137,072	-	137,072	-	137,072
Domestic Sewage Permits	366	-	366	-	366	-	366	-	366
ISW Permits	101,700	-	101,700	-	101,700	-	101,700	-	101,700
MS4	2,310,000	57.0	993,200	39.6	1,395,000	83.2	388,000	58.4	960,900
Construction Permits	1,314,000	-	1,314,000	-	1,314,000	-	1,314,000	-	1,314,000
Future Growth (2%)	219,800	-	219,800	-	219,800	-	219,800	-	219,800
Nuttree Branch TMDL Target	533,000	-	533,000	-	533,000	-	533,000	-	533,000
MOS (10%)	1,099,000	-	1,099,000	-	1,099,000	-	1,099,000	-	1,099,000
<b>TOTAL</b>	<b>20,100,000</b>	<b>45.3</b>	<b>11,000,000</b>	<b>45.3</b>	<b>11,000,000</b>	<b>45.3</b>	<b>11,000,000</b>	<b>45.3</b>	<b>11,000,000</b>

**Table 1-28. Allocation scenarios for Oldtown Creek phosphorus loads.**

Oldtown Creek Watershed		Scenario 1 (preferred)		Scenario 2		Scenario 3	
Source	Existing TP (lb/yr)	Reduction (%)	Allocation TP (lb/yr)	Reduction (%)	Allocation TP (lb/yr)	Reduction (%)	Allocation TP (lb/yr)
Cropland	102.4	76.7	23.9	50.0	51.2	78.7	21.8
Hay	84.8	76.7	19.8	50.0	42.4	78.7	18.1
Pasture	3.1	76.7	0.7	50.0	1.5	78.7	0.6
Forest	18.0	-	18.0	-	18.0	-	18.0
Trees	13.4	-	13.4	-	13.4	-	13.4
Shrub	0.9	-	0.9	-	0.9	-	0.9
Harvested	7.1	76.7	1.7	50.0	3.6	78.7	1.5
Wetland	4.1	-	4.1	-	4.1	-	4.1
Barren	1.3	76.7	0.3	79.2	0.3	78.7	0.3
Turfgrass	238.6	76.7	55.6	79.2	49.6	78.7	50.8
Developed Pervious	4.7	76.7	1.1	79.2	1.0	78.7	1.0
Developed Impervious	394.1	76.7	91.8	79.2	82.0	78.7	83.9
Streambank Erosion	118.2	76.7	27.6	79.2	24.6	40.0	71.0
Septic	0.9	76.7	0.2	79.2	0.2	78.7	0.2
Groundwater	150.9	-	150.9	-	150.9	-	150.9
MS4	1,406.0	76.7	327.7	79.2	292.5	78.7	299.6
Construction Permits	58.2	-	58.2	-	58.2	-	58.2
Future Growth (2%)	18.1	-	18.1	-	18.1	-	18.1
MOS (10%)	90.5	-	90.5	-	90.5	-	90.5
<b>TOTAL</b>	<b>2,720.0</b>	<b>66.8</b>	<b>904.0</b>	<b>66.8</b>	<b>903.0</b>	<b>66.8</b>	<b>903.0</b>

**Table 1-29. Allocation scenarios for Rohoic Creek phosphorus loads. Scenario 2 does not meet target reductions. Scenario 2 total is highlighted in red as it does not meet the target water quality goal.**

Rohoic Creek Watershed		Scenario 1 (preferred)		Scenario 2	
Source	Existing TP (lb/yr)	Reduction (%)	Allocation TP (lb/yr)	Reduction (%)	Allocation TP (lb/yr)
Cropland	31.3	98.8	0.4	100.0	-
Hay	113.1	98.8	1.4	100.0	-
Pasture	4.1	98.8	0.0	100.0	-
Forest	9.7	-	9.7	-	9.7
Trees	14.3	-	14.3	-	14.3
Shrub	1.5	-	1.5	-	1.5
Harvested	1.2	98.8	0.0	100.0	-
Wetland	2.6	-	2.6	-	2.6
Barren	-	-	-	-	-
Turfgrass	290.9	98.8	3.5	100.0	-
Developed Pervious	9.7	98.8	0.1	100.0	-
Developed Impervious	437.4	98.8	5.2	100.0	-
Streambank Erosion	86.5	98.8	1.0	100.0	-
Septic	0.9	98.8	0.0	100.0	-
Groundwater	122.3	-	122.3	-	122.3
NMMM Permits	85.3	-	85.3	-	85.3
Concrete Facility Permits	31.0	-	31.0	-	31.0
ISW Permits	394.1	50.0	197.0	-	394.1
MS4	523.4	98.8	6.3	100.0	-
Construction Permits	94.0	-	94.0	-	94.0
Future Growth (2%)	13.1	-	13.1	-	13.1
MOS (10%)	65.4	-	65.4	-	65.4
<b>TOTAL</b>	<b>2,330.0</b>	<b>71.9</b>	<b>654.0</b>	<b>64.2</b>	<b>833.0</b>

**Table 1-30. Allocation scenarios for Swift Creek phosphorus loads (inclusive of Nuttree Branch).**

Swift Creek Watershed		Scenario 1 (preferred)		Scenario 2		Scenario 3	
Source	Existing TP (lb/yr)	Reduction (%)	Allocation TP (lb/yr)	Reduction (%)	Allocation TP (lb/yr)	Reduction (%)	Allocation TP (lb/yr)
Cropland	70.9	73.2	19.0	25.0	53.2	82.2	12.6
Hay	362.6	73.2	97.2	25.0	271.9	82.2	64.5
Pasture	190.9	73.2	51.2	25.0	143.2	82.2	34.0
Forest	143.3	-	143.3	-	143.3	-	143.3
Trees	115.1	-	115.1	-	115.1	-	115.1
Shrub	2.5	-	2.5	-	2.5	-	2.5
Harvested	22.6	73.2	6.1	25.0	16.9	82.2	4.0
Wetland	7.9	-	7.9	-	7.9	-	7.9
Barren	43.7	73.2	11.7	75.3	10.8	82.2	7.8
Turfgrass	1,267.0	73.2	339.5	75.3	312.9	82.2	225.5
Developed Pervious	35.3	73.2	9.5	75.3	8.7	82.2	6.3
Developed Impervious	4,237.0	73.2	1,135.0	75.3	1,046.0	82.2	754.1
Streambank Erosion	4,383.0	73.2	1,175.0	75.3	1,083.0	50.0	2,191.0
Septic	17.4	73.2	4.7	75.3	4.3	82.2	3.1
Groundwater	1,588.0	-	1,588.0	-	1,588.0	-	1,588.0
VA0006254	9.6	-	9.6	-	9.6	-	9.6
VA0023426	46.0	-	46.0	-	46.0	-	46.0
NMMM Permits	121.8	-	121.8	-	121.8	-	121.8
Domestic Sewage Permits	17.2	-	17.2	-	17.2	-	17.2
ISW Permits	377.1	-	377.1	-	377.1	-	377.1
MS4	5,071.0	73.2	1,359.0	75.3	1,253.0	82.2	902.7
Construction Permits	1,040.0	-	1,040.0	-	1,040.0	-	1,040.0
Future Growth (2%)	174.6	-	174.6	-	174.6	-	174.6
MOS (10%)	873.0	-	873.0	-	873.0	-	873.0
<b>TOTAL</b>	<b>20,200.0</b>	<b>56.8</b>	<b>8,730.0</b>	<b>56.8</b>	<b>8,720.0</b>	<b>56.8</b>	<b>8,720.0</b>

## Public Participation

Throughout this study, VADEQ asked for help from local residents and knowledgeable stakeholders – those who have a particular interest in or may be affected by the outcome of the project. Public participation keeps stakeholders informed, and it allows for stakeholder input to ensure information in the study is accurate. While the project was progressing, VADEQ held two public meetings and three Technical Advisory Committee (TAC) meetings. The final public meeting was held on February 15, 2023 to present the draft TMDL document and begin the official public comment period. Received comments and responses are documented in **Appendix D**.

## Reasonable Assurance

Public participation in the development of the TMDL and any subsequent implementation plans, follow-up monitoring, permit action plans developed and implemented by MS4 permit holders, other permit compliance, and current implementation progress within the watersheds all combine to provide reasonable assurance that these TMDLs will be implemented and water quality will be restored in the impaired watersheds.

## What Happens Next

VADEQ will receive public comment on this report and then submit it to the U.S. Environmental Protection Agency (USEPA) for approval. This report sets the clean-up goals (or TMDL) for the James River tributaries, but the next step is a clean-up plan (or Implementation Plan) that lays out how those goals will be reached. Clean-up plans set intermediate goals and describe actions that should be taken to improve water quality in the impaired streams. Examples of the potential actions that could be included in an implementation plan for the James River tributaries are listed below:

- Conduct stream bank restoration projects in areas where banks are actively eroding
- Leave a band of 35 – 100 ft along the stream natural so that it buffers or filters out sediment from farm or residential land (a riparian buffer)
- Expanded street sweeping programs in urban areas
- Reduce runoff by increasing green spaces and reducing hardened spaces (asphalt or concrete)



### Frequently Asked

#### Question:

*How will the TMDL be implemented?* For point sources, TMDL reductions will be implemented through discharge permits. For nonpoint sources, TMDL reductions will be implemented through best management practices (BMPs). Landowners will be asked to voluntarily participate in state and federal programs that help defer the cost of BMP installation.

These and other actions that could be included in a clean-up plan are identified in the planning process along with associated costs and the extent of each action needed. The clean-up plan also identifies potential sources of money to help with the clean-up efforts. Most of the money utilized to implement actions in the watersheds to date has been in the form of cost-share programs, which share the cost of improvements with the landowner. Additional funds for urban stormwater practices have been made available through various grants, including an annual funding opportunity through the National Fish and Wildlife Foundation’s Chesapeake Bay Stewardship Fund program. Please be aware that the state or federal government will not fix the problems with the impaired streams. It is primarily the responsibility of individual landowners and local governments to take the actions necessary to improve these streams. The role of state agencies is to help with developing the plan and find money to support implementation, but actually making the improvements is up to those that live in the watershed. By increasing education and awareness of the problem, and by working together to each do our part, we can make the changes necessary to improve the streams.

VADEQ will continue to sample aquatic life in these streams and monitor the progress of the clean-up. This sampling will let us know when the clean-up has reached certain milestones listed in the plan. To begin moving towards these clean-up goals, VADEQ recommends that concerned citizens come together and begin working with local governments, civic groups, soil and water conservation districts, and local health districts to increase education and awareness of the problem and promote those activities and programs that improve stream health.

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# PCB Total Maximum Daily Load Development for Mountain Run, Culpeper County, Virginia



**Submitted by:**

Virginia Department of Environmental Quality

**Prepared by:**



COLLEGE OF ENGINEERING  
COLLEGE OF AGRICULTURE AND LIFE SCIENCES  
BIOLOGICAL SYSTEMS  
ENGINEERING  
VIRGINIA TECH.



Department of Biological Systems Engineering, Virginia Tech &  
Virginia Department of Environmental Quality

**Draft Report**  
September 2023

## **Project Personnel**

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## **Executive Summary**

### ***Background***

Section 303(d) of the Clean Water Act (CWA) and the United States Environmental Protection Agency's Water Quality Planning and Management Regulations require states to develop total maximum daily loads (TMDLs) for waterbodies that exceed applicable water quality standards (WQSs). TMDLs represent the total pollutant loading a waterbody can receive without exceeding applicable WQSs.

The Mountain Run watershed is impaired for the fish consumption use due to polychlorinated biphenyl (PCB) contamination. Other designated uses were not assessed for PCBs. The goal of this project was to identify the sources of PCBs in the watershed, model the fate and transport of PCBs through the watershed, and propose PCB source reduction scenarios that would allow the watershed to return to an unimpaired state. These reduction scenarios establish the TMDL loads, i.e., the maximum quantity of PCBs that can enter the impaired waterbody without exceeding the TMDL PCB endpoint.

The PCB impaired segment of Mountain Run begins at the outlet of Lake Pelham and extends downstream 24.53 miles through the Town of Culpeper to the confluence of Mountain Run and the Rappahannock River. Additionally, two unnamed tributaries to Mountain Run are impaired for PCBs, these small tributaries total 1.72 stream miles. The tributaries of Flat Run and Jonas Run have observed fish tissue and water column PCBs considered "fully supporting but having an observed effect" in the 305(b)/303(d) Water Quality Assessment Integrated Report. A Virginia Department of Health (VDH) fish consumption advisory is in effect for the section of Mountain Run extending from Route 15/29 bridge in Culpeper downstream to the confluence with Rappahannock River. The contributing watershed defines the study area for this project and is approximately 58,401 acres. Table ES-1 lists the major impaired segments of the Mountain Run study area, Table ES-2 lists the VDH fish consumption advisory, and Figure ES-1 maps the locations of the impaired water segments.

**Table ES-1. PCB impaired segments from the 2020 303(d) list addressed in this TMDL report (DEQ, 2020).**

Impaired Segment	305b/303(d) Segment ID	Segment Length (miles)	Initial Listing Year (PCBs in Fish Tissue/Water Column)	Description
Mountain Run	VAN-E09R_MTN01A00	7.58	2006 / 2020	Begins at the confluence with Flat Run, continuing downstream to the confluence with Rappahannock River.
	VAN-E09R_MTN02A04	5.67	2006 / 2020	Begins at the confluence with Jonas Run, continuing downstream to the confluence with Flat Run.
	VAN-E09R_MTN03A00	6.65	2006 / 2018	Begins at the Route 15/29 bridge continuing downstream to the confluence with Jonas Run.
	VAN-E09R_MTN04A04	4.63	2016 / 2018	Begins at Lake Pelham outlet, downstream to Route 15/29 bridge.
Unnamed Tributaries to Mountain Run	VAN-E09R_XBE01A18	0.6	- / 2020	Segment begins at the perennial headwaters near E.Chandler St., continuing downstream to the confluence with Mountain Run.
	VAN-E09R_XIH01A18	1.12	- / 2020	Segment begins at the perennial headwaters near Sunset Lane, continuing downstream to the confluence with Mountain Run.

**Table ES-2. Mountain Run water bodies with PCB Fish Consumption Advisories from the VDH.**

Water Body and Affected Boundaries	Segment Length (miles)	Affected Localities	Initial Advisory Year	Species	Advisories/ Restriction
Mountain Run extending from Route 15/29 bridge in Culpeper downstream to the confluence with Rappahannock River.	19	Culpeper County	2004	American Eel	No more than two meals/month

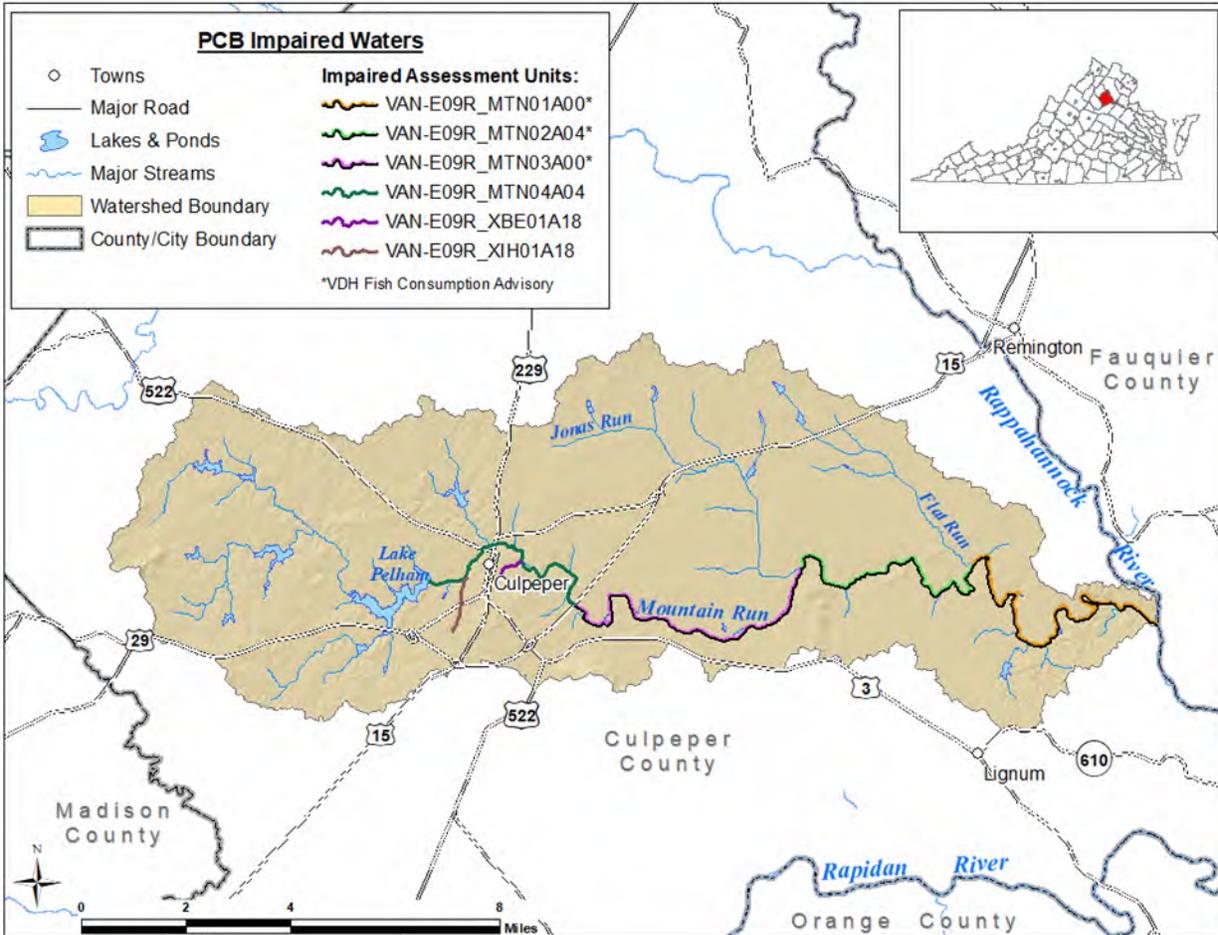


Figure ES-1. PCB impaired segments in the Mountain Run watershed.

## Pollutant Sources

PCBs are synthetic compounds that were commonly manufactured in the first half of the 20<sup>th</sup> century, and were used for industrial processes. Their chemical structure consists of two bonded phenyl rings and at least one chlorine atom. Although banned in the 1970's their chemical properties enable PCBs to persist in the environment. Exposure to PCBs leads to chronic ailments such as endocrine disruption, and they are a suspected carcinogen. Sources of PCBs were characterized throughout the Mountain Run study area. Point sources include several types of permitted facilities in this watershed. Nonpoint sources include known contaminated sites (e.g., former manufacturing facilities, metal recycling facilities, railyards and railway spurs, spills), non-regulated surface sources (the sum of net atmospheric deposition to land, loads

from small tributaries that are not explicitly specified in the model, unregulated stormwater runoff, loads from unidentified contaminated sites, and unspecified point source discharges), atmospheric deposition to water surfaces, and PCB-contaminated stream bed sediment.

## ***Modeling***

The Hydrological Simulation Program–FORTRAN (HSPF) (Bicknell et al., 2005) was used to simulate the fate and transport of PCBs in the Mountain Run study area. HSPF is a continuous computational model that can represent fate and transport of pollutants on both the land surface and instream. Modeling included hydrology, sediment, and PCB fate and transport. Modeling segments divided the study area into discrete regions, based on PCB sources present and major tributaries. Outputs from each upstream segment became inputs into downstream segments. The hydrologic modeling established the foundation for the Mountain Run PCB TMDL model. Since PCBs are hydrophobic and tend to associate with sediment, a sediment model component was used as well.

The final model also simulated PCB fate and transport. The Mountain Run model was calibrated at each stage of model development, using a “weight-of-evidence” approach. Multiple analyses were used to ensure the simulated outputs adequately reflected the observed data.

## ***Endpoints***

The impaired segments of Mountain Run do not support the fish consumption designated use due to exceedances of the VDH’s PCB fish tissue threshold and the Virginia Department of Environmental Quality’s (DEQ) total PCB (tPCBs) fish tissue value (TV) and water quality criterion (WQC). A segment-specific PCB water quality endpoint was calculated using a Bioaccumulation Factor (BAF) approach. The method correlates the localized instream concentrations of PCBs to the concentration of PCBs found within a variety of fish species collected in the same area. As such, the maximum allowable water column tPCB concentration is calculated to ensure the fish tissue thresholds established by either VDH, 100 ng/g (ppb), or DEQ, 18 ng/g (ppb) will be

attained. The water column tPCB endpoint (310 pg/L) for Mountain Run was calculated using the BAF approach.

**PCB TMDL**

Various source reduction scenarios were evaluated to identify implementable scenarios that meet the TMDL endpoint. Load reduction allocation scenarios were generated using meteorological data for the harmonic mean flow year (HMFY) using the USGS flow gage on the Rappahannock River at Remington, VA (USGS 01664000) since there are no active continuous USGS flow gages on Mountain Run. The HMFY is the observed flow year whose harmonic mean flow best corresponds to the harmonic mean flow of the entire observed flow data period at a given gage. An analysis of Rappahannock River flow data determined that the HMFY was 2008.

The modeled PCB loads correspond to anticipated and permitted future conditions for Mountain Run. For Mountain Run, the goal of the allocation scenarios is to meet the TMDL endpoint. Equation ES-1 was used to calculate the loadings shown in Table ES-3.

$$TMDL = WLA_{Total} + LA + MOS \qquad \text{Eq. ES-1}$$

Where:

$WLA_{Total}$  = waste load allocation (point source contributions, future conditions which account for point source facilities inadvertently excluded from TMDL);  
 $LA$  = load allocation (nonpoint source contributions); and  
 $MOS$  = margin of safety.

**Table ES-3. Annual and daily PCB loadings for the TMDL.**

Impaired Segment (Harmonic Mean Flow Year)	Units	$WLA_{Total}^1$	$LA^2$	$MOS^3$	TMDL
Mountain Run	mg/yr	2,775	57,574	3,176	63,525
(HMFY: 2008)	mg/day	18	463	26	507

<sup>1</sup>  $WLA_{Total}$  includes future conditions.

<sup>2</sup> The  $LA$  is the remaining loading allowed after the  $MOS$  and  $WLA_{Total}$  are subtracted from the TMDL as determined for the downstream end/outlet of the impaired segment.

<sup>3</sup> Explicit  $MOS$  (5%).

**Margin of Safety**

In order to account for the uncertainty of the relationship between the pollutant loads and the quality of the receiving waters, a margin of safety (MOS) was implemented. For Mountain Run, an explicit MOS of 5% was included in the TMDL.

**Allocation Scenario**

The proposed TMDL allocation scenario requires load reductions from point and nonpoint sources of PCBs. The difference between the TMDL and the existing annual load represents the necessary level of PCB reduction. The recommended reduction scenario from nonpoint sources that will meet the TMDL endpoint of 310 mg/L for Mountain Run is listed in Table ES-4.

**Table ES-4. PCB nonpoint source allocation scenarios for Mountain Run.**

Required PCB Loading Reductions to Meet the TMDL Endpoint of 310 pg/L (%)		
Loads from Unregulated Surface Sources <sup>1</sup>	Loads from Contaminated Sites <sup>2</sup>	Loads from Streambed Sediments
55	99	0

<sup>1</sup> Unregulated surface sources represent PCB loads supported by the observed data whose specific location have yet to be identified.

<sup>2</sup> Contaminated sites include Jim’s Liquid Wastes site, railyards and spurs, electrical substations, and PREP spills.

Table ES-5 provides a summary of the existing loads, WLAs, LAs, and percent reduction by source category. The LAs and existing loads for the nonpoint sources are the average annual loads based on the source contribution to instream PCB concentration at the outlets of the impaired segments. The WLA is calculated at the outlets of the permitted areas. Existing loads for nonpoint sources are back calculated from the final TMDL. The row for WLA Future Conditions in Table ES-5 accounts for point source PCB dischargers that may have been inadvertently excluded from the TMDL and are equal to 0.25% of the TMDL for Mountain Run.

**Table ES-5. Average annual tPCB loads for Mountain Run source categories.**

Source Category	Existing Load (mg/yr)	WLA (mg/yr)	LA (mg/yr)	Reduction (%)
Municipal Dischargers <sup>1</sup>	2,364	2,616		-
Industrial Stormwater General Permits	109			55
WLA Future Conditions <sup>2</sup>		159		
Contaminated Sites	7,558		76	99
Unregulated Surface Sources <sup>3</sup>	65,546		29,496	55
Streambed Sediments	27,960		27,960	0
Atmospheric Deposition (water surface)	43		43	0
TOTAL	103,580	2,775	57,575	42%

<sup>1</sup>A tPCB load reduction for Municipal Dischargers does not apply as the existing load is less than the WLA.

<sup>2</sup>WLA Future Conditions account for permitted facilities that may come on-line in the future and are equal to 0.25% of the TMDL for Mountain Run.

<sup>3</sup> Unregulated surface sources are the sum of net atmospheric deposition to land surfaces, loads from small tributaries that are not explicitly specified in the model, stormwater runoff, loads from unidentified contaminated sites, and unspecified point source discharges.

## **Implementation**

The goal of the TMDL program is to establish a three-step path that will lead to reasonable assurance that attainment of the applicable WQSs will be achieved. The first step in the process is to develop TMDLs that will meet targeted water quality goals. This report represents the culmination of that effort for the PCB impairments in Mountain Run. The second step is to develop a TMDL implementation plan, which can include the use of available PCB data to “fingerprint” source areas, perform additional investigation of uncharacterized nonpoint sources, and to recommend the implementation of best management practices (BMPs) where practical or remediate hot spots. The final step is to initiate recommendations outlined in the TMDL implementation plan, and to monitor stream water quality to determine if fish tissue thresholds and WQSs are being attained. Watershed stakeholders will have opportunities to provide input and to participate in the development of the implementation plan in the future. Implementation plan development will be supported by DEQ’s regional and local offices and other cooperating agencies.

## ***Public Participation***

Public participation was elicited at every stage of the TMDL development in order to receive inputs from stakeholders and to apprise the stakeholders of the progress made. The first Technical Advisory Committee (TAC) meeting was held on Tuesday, January 12, 2021, and was conducted virtually through an online webinar platform due to the Covid-19 State of Emergency. Presentations included an overview of the Mountain Run PCB TMDL project including problem identification, PCB monitoring results and prospective sources. As a part of their contract with DEQ to develop the Mountain Run PCB TMDL, Virginia Tech's department of Biological Systems Engineering (BSE) presented the modeling process and the PCB sources that were considered. This virtual meeting was attended by 11 stakeholders (four representatives of non-governmental organizations, two representatives of local government, one representative of state government, three representatives of Virginia Pollutant Discharge Elimination System (VPDES) permitted facilities, and one representative of Virginia Association of Municipal Wastewater Agencies and Virginia Municipal Stormwater Association).

The first PCB Public Meeting was held on Wednesday, January 13, 2021, also held virtually through a webinar platform. The meeting hosted by DEQ staff included background information on PCBs and related human health concerns, long term PCB monitoring data from Mountain Run, and an overview of the TMDL process that will be used in the Mountain Run watershed. Virginia Tech BSE presented details on the PCB modeling process for determining PCB pollutant fate and transport. Fourteen stakeholders registered for this virtual meeting. The comment period for the first public meeting ended February 16, 2021.

The second TAC meeting was held on Tuesday, July 26, 2022 at the Culpeper County Library. The primary focus of the meeting was to review the draft PCB sources allocation scenarios. This meeting was attended by three stakeholders (two representatives of state government and one representative of a VPDES permitted facility).

The second and final Public Meeting to present the draft PCB TMDL report for Mountain Run was held on September 6, 2023, and four people attended the meeting at

the Culpeper County Board of Supervisors conference room. The public comment period for the second public meeting ended October 6th, 2023, and a single comment was received.

**Attachment II – Amended Water Quality Management Planning Regulation  
proposed for Board Adoption**

**9 VAC 25-720-60 A      James River Basin**  
**9 VAC 25-720-70 A      Rappahannock River Basin**

**9VAC25-720-60. James River Basin.**

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	Waterbody Identification	Pollutant	WLA <sup>1</sup>	Units
<u>185.</u>	<u>Bailey Creek.</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Prince George, Hopewell</u>	<u>G03R</u>	<u>Sediment</u>	<u>424,000</u>	<u>lbs/yr</u>
<u>186.</u>	<u>Nuttree Branch.</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield</u>	<u>J17R</u>	<u>Sediment</u>	<u>303,000</u>	<u>lbs/yr</u>
<u>187.</u>	<u>Oldtown Creek.</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield, Colonial Heights</u>	<u>J15R</u>	<u>Sediment</u>	<u>253,000</u>	<u>lbs/yr</u>
<u>188.</u>	<u>Oldtown Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield, Colonial Heights</u>	<u>J15R</u>	<u>Phosphorous</u>	<u>404</u>	<u>lbs/yr</u>
<u>189.</u>	<u>Proctors Creek.</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield</u>	<u>G01R</u>	<u>Sediment</u>	<u>573,000</u>	<u>lbs/yr</u>
<u>190.</u>	<u>Rohoic Creek.</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Dinwiddie, Petersburg</u>	<u>J15R</u>	<u>Sediment</u>	<u>377,000</u>	<u>lbs/yr</u>

TMDL #	Stream Name	TMDL Title	City/County	Waterbody Identification	Pollutant	WLA <sup>1</sup>	Units
<u>191.</u>	<u>Rohoic Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Dinwiddie, Petersburg</u>	<u>J15R</u>	<u>Phosphorous</u>	<u>426</u>	<u>lbs/yr</u>
<u>192.</u>	<u>Swift Creek.</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield, Powhatan</u>	<u>J17R</u>	<u>Sediment</u>	<u>2,870,000</u>	<u>lbs/yr</u>
<u>193.</u>	<u>Swift Creek</u>	<u>Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg</u>	<u>Chesterfield, Powhatan</u>	<u>J17R</u>	<u>Phosphorous</u>	<u>3,145</u>	<u>lbs/yr</u>

<sup>1</sup>The total WLA can be increased prior to modification provided that DEQ track these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

<sup>2</sup> GS means growing season.

**9VAC25-720-70. Rappahannock River Basin.**

A. Total Maximum Daily Load (TMDLs).

TMDL #	Stream Name	TMDL Title	City/County	Waterbody Identification	Pollutant	WLA <sup>1</sup>	Units
<u>83.</u>	<u>Mountain Run</u>	<u>PCB Total Maximum Daily Load Development for Mountain Run, Culpeper County, Virginia</u>	<u>Culpeper</u>	<u>E09R</u>	<u>PCBs</u>	<u>2,775</u>	<u>mg/year</u>

<sup>1</sup>The total WLA can be increased prior to modification provided that DEQ track these changes for bacteria TMDLs where the permit is consistent with water quality standards for bacteria.

<sup>2</sup>WLAs from the Dan River TMDL report represent the WLA for the watershed, which may include North Carolina waters in addition to Virginia waters. Virginia permits will be issued in accordance with the Virginia water quality standard.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-720
<b>VAC Chapter title(s)</b>	Water Quality Management Planning Regulation
<b>Action title</b>	Amendment to add ten new TMDL wasteload allocations in the James River Basin (9VAC25-720-60 A) and Rappahannock River Basin (9VAC25-720-70 A).
<b>Final agency action date</b>	June 25, 2024
<b>Date this document prepared</b>	May 15, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code. 30, 2023*

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The amendments to 9VAC25-720, Water Quality Management Planning Regulation (WQMPR), include adding nine new Total Maximum Daily Load (TMDL) wasteload allocations (WLA) in the James River Basin (9VAC25-720-60 A) and one new TMDL WLA in the Rappahannock River Basin (9VAC25-720-80 A).

The TMDL WLAs were developed in accordance with Federal Regulations (40 CFR § 130.7) and are exempt from the provisions of Article II of the Virginia Administrative Process Act (§2.2-4006 A 14). The TMDL reports where WLAs are developed are subject to the TMDL public participation process, and the WLAs are adopted as part of 9VAC25-720 in accordance with the Department of Environmental Quality's

(DEQ’s “Public Participation Procedures for Water Quality Management Planning” guidance (GM 23-2005).

**Mandate and Impetus**

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

The Clean Water Act (CWA) and the Environmental Protection Agency’s (EPA) Water Quality Management and Planning Regulation (40 CFR §130) require states to identify waters that are in violation of water quality standards and to place these waters on the state’s 303(d) List of Impaired Waters. Also, the CWA and EPA’s enabling regulation require that a TMDL be developed for those waters identified as impaired. In addition, the Code of Virginia, §62.1-44.19:7.C requires DEQ to develop TMDLs for impaired waters. A TMDL is a determination of the amount of a specific pollutant that a water body is capable of receiving without violating water quality standards for that pollutant. TMDLs are required to identify all sources of the pollutant and calculate the pollutant loads from each source that are necessary for the attainment of water quality standards.

The U.S. EPA’s Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate TMDLs in the state’s WQMPR (9VAC25-720). Also, U.S. EPA’s Water Quality Management and Planning Regulation 40 CFR§122.44(d) (1) (vii) (B) requires that new or reissued Virginia Pollution Elimination Discharge System (VPDES) permits be consistent with the TMDL WLA. This means that the WLA component of the TMDL incorporated into the regulation will be implemented through the requirements specified in the VPDES permits, for example through numeric water quality-based effluent limitations or in certain cases best management practices (BMPs).

**Acronyms and Definitions**

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

**Allocation:** That portion of a receiving water’s loading capacity that is attributed to one of its existing or future pollution sources (nonpoint or point) or to natural background sources.

**Best Management Practice (BMP):** a schedule of activities, prohibition of practices, maintenance procedures and other management practices to prevent or reduce the pollution of state waters. BMPs include treatment requirements, operating and maintenance procedures, schedule of activities, prohibition of activities, and other management practices to control plant site runoff, spillage, leaks, sludge or waste disposal, or drainage from raw material storage.

**Clean Water Act (CWA):** Clean Water Act 33 USC § 1251 et seq. as amended, as of 1987

**EPA:** United States Environmental Protection Agency

**Industrial Stormwater General Permit (ISWGP) –** Industrial Stormwater General Permit issued for 9VAC25-151 et. seq. (Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Discharges of Stormwater Associated with Industrial Activity)

**Municipal separate storm sewer (MS4):** network of drainage systems, including pipes, ditches, and other conveyances, designed to carry stormwater runoff directly to nearby streams, rivers, and other bodies of water owned or operated by a public body.

**Nonpoint source:** Pollution that is not released through pipes but rather originates from multiple sources over a relatively large area. Nonpoint sources can be divided into source activities related to either land or water use including failing septic tanks, improper animal-keeping practices, forest practices, and urban and rural runoff.

**Polychlorinated Biphenyl (PCB).** PCBs belong to a broad family of man-made organic chemicals known as chlorinated hydrocarbons. PCBs were domestically manufactured from 1929 until manufacturing was banned in 1979. They have a range of toxicity and vary in consistency from thin, light-colored liquids to yellow or black waxy solids.

**Pollution Minimization Plan (PMP)** - plans designed to eliminate or reduce to the maximum extent practicable the on-going release of Polychlorinated Biphenyls (PCBs)

**SWPPP: Stormwater Pollution Prevention Plan** - plan required as part of a VPDES Industrial Stormwater intended to document the selection, design, and installation of control measures, including BMPs, to minimize the pollutants in all stormwater discharges from the facility, and to meet applicable effluent limitations and water quality standards

**Total Maximum Daily Load (TMDL):** The sum of the individual wasteload allocations (WLA's) for point sources, load allocations (LA's) for nonpoint sources and natural background, plus a margin of safety (MOS). TMDLs can be expressed in terms of mass per time, toxicity, or other appropriate measures that relate to a state's water quality standard.

**VDOT:** Virginia Department of Transportation

**Virginia Pollution Discharge Elimination System (VPDES) permit:** a document issued by the board or the department, pursuant to 9VAC25-31, authorizing, under prescribed conditions, the potential or actual discharge of pollutants from a point source to surface waters.

**Wasteload allocation (WLA):** The portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution. WLAs constitute a type of water quality-based effluent limitation.

**Water quality standard:** Law or regulation that consists of the beneficial designated use or uses of a water body, the numeric and narrative water quality criteria that are necessary to protect the use or uses of that particular water body, and an anti-degradation statement.

**Water Quality Management Planning Regulation (WQMPR):** 9VAC25-720 et. seq.

## Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

At its meeting on June 25, 2024, the State Water Control Board (SWCB) adopted the amendments to the WQMPR (9VAC25-720 et seq.).

## Legal Basis

*Identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

§62.1-44.15 of the State Water Control Law authorizes the State Water Control Board to promulgate regulations controlling water pollution to protect public health and welfare. The Code of Virginia § 62.1-44.19:7 directs the Board to develop plans to address impaired waters. The EPA’s Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate TMDLs in the state’s WQMPR (9VAC25-720). Changes to this chapter of the Virginia Administrative Code are exempt from provisions of Article II of the Virginia Administrative Process Act (§2.2-4006 A 14).

**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it’s intended to solve.*

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The regulatory changes are needed to meet the mandates of the federal Clean Water Act and the implementing Water Quality Management and Planning Regulation (40 CFR §130) to protect public health and welfare by requiring states to identify waters that are in violation of water quality standards and to place these waters on the state’s 303(d) List of Impaired Waters. Also, the CWA, EPA’s enabling regulation, and the Code of Virginia, §62.1-44.19:7.C require Virginia to develop a TMDL for impaired waters. The U.S. EPA’s Water Quality Management and Planning Regulation 40 CFR §130.7(d) (2) directs the states to incorporate TMDLs in the state’s Water Quality Management Plan (9VAC25-720). This regulatory change contributes to achieving the pollution reductions needed from point source dischargers to remove a stream from the impaired waters list and improve water quality to the benefit of citizens to take advantage of all beneficial uses available from State Waters.

**Substance**

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

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The amendments to the state’s WQMPR (9VAC25-720) include adding nine new TMDL wasteload allocation in the James River Basin (9VAC25-720-60.A) and one new TMDL wasteload allocation in the Rappahannock River Basin (9VAC25-720-70.A).

**Issues**

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

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Public: The regulatory change broadly benefits the public by improving the water quality of impaired waters by identifying the maximum amount of pollutant load a stream can assimilate and meet Water Quality Standards (9VAC25-260), to support all designated uses of waters, and ultimately be removed from Virginia’s 303(d) list of impaired waters. Improved water quality will protect human health and aquatic life, resulting in healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic development, and commercial and recreational fishing industries.

Agency or Commonwealth: The agency and Commonwealth will benefit because the change to the regulation meets the legal mandate in state and federal law to incorporate the WLA into the WQMPR to meet State Water Control Law § 62.1-44.19:7. Additionally, this meets the Clean Water Act 40 CFR 130.7 requirement to include the approved TMDL loads in the state’s waters quality management plans and VPDES permits.

Regulated entities could incur costs, such as installing new equipment, changing operational procedures, or undertaking best practices if they need to reduce pollution discharges. WLAs are not self-executing; their application primarily occurs when DEQ issues new or modified VPDES permits within impaired waters. As a result, DEQ cannot currently quantify the costs. The WLAs from the TMDL studies could indirectly affect certain facility and locality expenses. The impact of a WLA, if any, depends on the entity's operations and permit requirements. If a DEQ permit necessitates pollutant reductions to meet the overall WLA, each permittee would have distinct requirements and options to reduce sediment, phosphorus or Polychlorinated Biphenyls (PCBs) based on their specific industrial processes or BMPs. These cannot be monetized because of the variability in potential industrial processes, BMPs, and the need to review a VPDES permit application to assess if an individual facility needs to reduce sediment, phosphorus or PCB discharges.

### Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change that is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

This regulatory change has no requirements that exceed applicable federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

#### **Other State Agencies Particularly Affected:**

This regulatory change may affect the Virginia Department of Transportation (VDOT) which is one of the eight entities that hold a Municipal Separate Storm Sewer System (MS4) permit in the watershed of the impaired stream. As a result, VDOT may incur some costs to reduce sediment and phosphorus discharges to comply with WLAs established for the James River tributaries TMDL. Under their MS4 permit in the watershed, VDOT must submit a TMDL action plan outlining the measures they will undertake to accomplish sediment and phosphorus reductions to meet the WLAs. MS4 permittees may incur costs, such as installing new equipment, changing procedures, or adopting best practices. Exact costs are uncertain because of the variability in control measures identified in the action plans. VDOT, along with other MS4 permittees in the watersheds, does not have a specific individual reduction target. Instead, the TMDL report aggregates reductions across all MS4 permittees which provides flexibility for these permit holders to address their share of the pollutant load and necessary reductions.

#### **Localities Particularly Affected:**

Four localities (Chesterfield County and the Cities of Hopewell, Colonial Heights, and Petersburg) may be affected since they also hold MS4 permits and may incur costs to reduce sediment and phosphorus discharges to comply with the WLA established for the James River tributaries TMDL. Under their MS4 permits, they must submit a TMDL action plan outlining measures they will undertake to accomplish sediment and phosphorus reductions to meet the WLAs. MS4 permittees may incur costs, such as installing new equipment, changing procedures, or adopting best practices. Exact costs are uncertain because of the variability in potential processes, BMPs, and the need to review control measures identified in the action plans. These localities, along with other MS4 permittees in the watersheds, do not have a specific individual reduction target. Instead, the TMDL report aggregates reductions across all

MS4 permittees which provides flexibility for these permit holders to address their share of the pollutant load and necessary reductions.

**Other Entities Particularly Affected:**

Central State Hospital, Fort Lee, and John Tyler Community College are other entities holding MS4 permits that may be affected by the adoption of the WLAs. Similarly to other MS4 permittee, these entities must draft TMDL action plans outlining the measures they will undertake to accomplish sediment and phosphorus reductions. Exact costs are uncertain because of the variability in potential processes, BMPs, and the need to review control measures identified in the action plans. By aggregating the WLA with other MS4s, the entities have flexibility to address their share of the pollutant load and necessary reductions.

The sediment and phosphorus TMDL WLAs generated for Rohoic Creek in the James River Tributaries TMDL affect five existing Industrial Stormwater General Permit (ISWGP) facilities. The indirect costs for the facilities cannot be monetized at this time because the specific reductions for each facility are not known until permit issuance, and facilities have a variety of pollutant reduction options specific to their operations.

Additionally, seven (7) facilities with an ISWGP may be affected since they may need to reduce PCB discharges in order to comply with the WLA established for the Mountain Run TMDL. ISWGP facilities are required to develop a Stormwater Pollution Prevention Plan (SWPPP) as part of their existing VPDES permit requirements. To meet their WLA, each will be required to incorporate a Pollution Minimization Plan (PMP) into their existing SWPPP that identifies sources of PCBs in their effluent and the measures they will carry out to reduce PCBs and report their progress over time. The effects associated with drafting and implementing a PMP cannot be precisely determined because DEQ cannot predict which pollution reduction options facilities will incorporate into their PMPs since they have many alternatives available specific to their operations.

**Public Comment**

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

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The comment period for the regulation amendment with the TMDL wasteload allocations extended from March 25 – April 25, 2024. No comments were received.

**Details of All Changes Proposed in this Regulatory Action**

*List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

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Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
60 A	N/A	James River Basin section does not include Sediment or Phosphorus WLAs for these impaired sections of Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek	Adding nine new TMDL WLA in the James River Basin to reduce sediment discharges into these impaired sections of Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek and reduce phosphorus in these impaired sections of Oldtown Creek, Rohoic Creek, and Swift Creek
70 A	N/A	Rappahannock River Basin section does not include a PCB WLA for this impaired section of Mountain Run	Adding one new TMDL WLA in the Rappahannock River Basin to reduce PCB discharges into this impaired section of Mountain Run

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

These regulation amendments meet the requirements of federal and state law and regulation. The regulatory amendment does not directly impose any direct compliance requirement, reporting requirement, or performance standard that could be lessened or substituted for small business. Any delays in adopting the standards or exemption of small businesses from these requirements will not meet the minimum requirements of federal law and regulation. No alternative approach to developing a TMDL and the associated WLA was considered since State Water Control Law § 62.1-44.19:7 and the Clean Water Act 40 CFR 130.7(c) requires DEQ to develop a TMDL for each impaired water body to address pollutants that may enter the water. The regulation only lists the TMDLs and WLA, along with the impaired streams where it applies, but does not identify any facilities affected or mandate any direct measures, compliance, reporting, or standard that facilities must take to meet the WLA.

**Family Impact**

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

The amendment of the WQMPR is for the protection of public health, safety, and welfare and the Board does not anticipate any direct impact on the institution of the family and family stability.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-720
<b>VAC Chapter title(s)</b>	Water Quality Management Planning Regulation
<b>Action title</b>	Add 10 State Water Control Board adopted wasteload allocations (WLAs) for 2 total maximum daily load (TMDL) studies: 1) James River Tributaries TMDL, and 2) Mountain Run PCB TMDL
<b>Date this document prepared</b>	May 15, 2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Final Exempt Action

### **Cost Benefit Analysis**

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

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

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

### **Introduction.**

To address impaired waters, the State Water Control Board (Board) amended 9 VAC 25-720, Water Quality Management Planning Regulation (WQMPR), to add total maximum daily load (TMDL) wasteload allocations (WLAs). A TMDL WLA is a calculation of the maximum amount of a pollutant that an impaired waterbody can receive from point sources while still maintaining Virginia Water Quality Standards (WQS) (9VAC25-260) and meeting its designated

uses, such as recreational, aquatic life; wildlife; and producing edible and marketable natural resources.

The Board adopted amendments to 9VAC25-720-60 A to incorporate sediment and phosphorus WLAs developed in the James River tributaries benthic TMDL study. This study addressed 6 different watersheds located in Chesterfield, Dinwiddie, and Prince George Counties, as well as the Cities of Hopewell, Colonial Heights, and Petersburg. Additionally, in the Rappahannock River basin, the Board adopted amendments to 9VAC25-720-70 A to incorporate a polychlorinated biphenyl (PCB) WLA developed for the Mountain Run PCB TMDL study, located in Culpeper County, Virginia.

Virginia’s 2022 Section 305(b)/303(d) Water Quality Assessment Integrated Report identified streams affected by the WLA in the James River Tributaries TMDL study. These streams are impaired due to excessive sediment and phosphorus violating the general aquatic life (benthic) water quality standard. Similarly, the Integrated Report identified Mountain Run as impaired because PCB amounts are too high in fish tissue. Consequently, State Water Control Law § 62.1-44.19:7 and section 303(d) of the Clean Water Act (implemented through 40 CFR 130.7(c)) mandate that DEQ develop a TMDL for the specific pollutants (sediment, phosphorus, or PCB) causing impairments in each impaired water body. In each TMDL study, DEQ evaluated multiple scenarios to effectively reduce the pollutant levels in these studies. Stakeholders guided the selection of the preferred scenarios for each TMDL by providing feedback. The Environmental Protection Agency (EPA) has preliminarily approved both TMDLs and associated WLAs included in this regulatory change.

WLA’s adopted, amended, or repealed by the Board pursuant to the State Water Control Law are identified as final exempt actions by the Administrative Process Act § 2.2-4006 A.14. To meet the requirements of the APA exemption for adding a WLA, the public, including impacted facilities, were invited to participate in the rulemaking process during multiple stakeholder meetings, which included two public meetings for each TMDL study with 30-day comment periods for the stakeholders to provide comments on the TMDL development and report. Four public comments were received during the comment periods for the James River Tributaries TMDL and one for the Mountain Run PCB TMDL. DEQ addressed each comment in the respective TMDL report.

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

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p><u>Direct costs:</u> The WQMPR (9VAC 25-720) does not result in any direct monetizable costs. The regulation lists TMDL reports, WLAs, and the impaired streams to which they apply. However, it does not prescribe direct measures that facilities must implement to meet the WLA. Consequently, the regulation has no direct costs associated with compliance and does not identify any affected facilities, municipalities, or commercial entities.</p> <p><u>Indirect Costs:</u> WLAs are not self-executing; their application primarily occurs when DEQ issues new or modified Virginia Pollution Elimination Discharge System (VPDES) permits within impaired waters. As part of</p>
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permits issued under the VPDES regulations (9VAC25-31) numeric water quality-based effluent limitations or, in certain cases, best management practices (BMPs) may be included in VPDES permits to meet the WLAs for an impaired water. As a result, DEQ cannot currently quantify indirect costs. The WLAs for the James River Tributaries and Mountain Run PCB TMDL studies could indirectly affect certain facility and municipality expenses. The impact of a WLA, if any, depends on the municipality or facility operations and permit requirements. If a DEQ permit necessitates pollutant reductions to meet the overall WLA, each permittee would have distinct requirements and options to reduce sediment, phosphorus or PCBs based on their specific processes or BMPs.

Eight (8) permitted municipal separate storm sewer systems (MS4s) may incur indirect costs to reduce sediment and phosphorus discharges to comply with the WLAs established for the James River Tributaries TMDL. These MS4 permittees in the watersheds, do not have specific individual reduction targets. Instead, the TMDL report aggregates reductions across all MS4 permittees which provides flexibility for these permit holders to address their share of the pollutant load and necessary reductions. In aggregate, these MS4 permittees need to reduce their sediment discharges between 54.5% and 88.4%, depending on the watershed, to meet the WLA and achieve water quality standards. Similarly, permitted MS4s in the Oldtown Creek, Rohoic Creek, and Swift Creek watersheds need to reduce phosphorus, in aggregate, between 73.3% and 98.8%, depending on the watershed. Under their MS4 permits, each system is required to draft a TMDL Action Plan outlining the measures they will undertake to meet the WLA. However, these measures and their indirect costs cannot be precisely monetized at this time. DEQ cannot predict the specific permit reductions that will be determined later, or which pollution reduction options MS4s will incorporate into their action plans for each watershed or pollutant.

Additionally, the TMDL WLA generated for Rohoic Creek affects five facilities that have Industrial Stormwater General Permits (ISWGPs). Similarly, these ISW permittees in the watersheds, do not have specific individual reduction targets. As a group, facilities with ISWGPs would need to reduce their sediment and phosphorus discharges by 50% to meet the WLA and achieve water quality standards. ISWGP permitted facilities are required to develop a Stormwater Pollution Prevention Plan (SWPPP) as part of their existing VPDES permit requirements that identifies how they will reduce sediment or phosphorous to meet the overall WLA. The indirect costs for the facilities cannot be monetized at this time because the specific reductions for each facility are not known until permit issuance, and facilities have a variety of pollutant reduction options specific to their operations.

Seven (7) facilities with ISWGP permits may incur indirect costs to reduce PCB discharges to comply with the WLA established for the Mountain Run PCB TMDL. These facilities with ISWGP permits need to reduce their PCB discharges on average 55%, ranging between 2% and 86%, depending on the facility, to meet the WLA and achieve water quality standards. ISWGP permitted facilities are required to develop a Stormwater Pollution Prevention Plan (SWPPP) as part of their existing VPDES permit requirements. To meet their WLA, each will be required to incorporate a Pollution Minimization Plan (PMP) into their existing SWPPP that identifies sources of low-level PCBs in their effluent and adaptive management practices they will carry out to reduce PCB discharges and report their progress over time. The indirect costs associated with drafting and implementing a PMP cannot be precisely monetized at this time. DEQ cannot predict which pollution reduction options facilities will incorporate into their PMPs since they have many alternatives specific to their operations.

New or expanding facilities requiring a VPDES permit to discharge sediment, phosphorus, or PCBs into the impaired water will also need to comply with the respective WLA. WLAs include a future growth buffer to allow for new facilities or development in an impaired watershed if they discharge the specified pollutants. WLAs for sediment were calculated using standard permit requirements. Therefore, these facilities would be unlikely to require managing discharges beyond typical VPDES permit requirements. Facilities discharging phosphorus in Rohoic creek or PCBs in Mountain Run would have the same responsibilities as existing permittees in these impaired waters to comply with the WLAs. VPDES permits already require monitoring for sediment and phosphorus so new monitoring beyond typical requirements would be unlikely.

Direct Benefits: Adding the WLAs to the WQMPR benefits the water body by ensuring that permit limits will result in improved water quality and contribute to efforts to remove the streams from the impaired waters list. The amendment does not have any direct benefits that can be monetized since the regulation only lists TMDL reports, WLAs, and the impaired streams to which they apply and does not mandate any direct measures to meet the WLA.

Indirect Benefits: DEQ is not able to monetize the potential indirect benefits to implement the WLA at this time. Indirect benefits are incurred later, when VPDES permits incorporate the WLA to manage sediment, phosphorus, or PCB discharges to improve water quality. Improved water quality will protect human health and aquatic life, resulting in healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic

	development, and producing edible and marketable natural resources, such as by commercial and recreational fishing industries.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable	(b) Not applicable
(3) Net Monetized Benefit	Not applicable	
(4) Other Costs & Benefits (Non-Monetized)	<p><u>Indirect Costs:</u> Regulated entities could incur costs such as installing new equipment, changing operational procedures, or undertaking best practices if they needed to reduce pollution discharges. These cannot be monetized because of the variability in potential industrial processes, best management practices, and the need to review a VPDES permit application to assess if an individual facility needs to reduce sediment, phosphorus or PCB discharges.</p> <p><u>Direct Benefits:</u> This change to the regulation meets the legal mandate in state and federal law to incorporate the WLA into the WQMPR to meet State Water Control Law § 62.1-44.19:7. Additionally, this meets section 303(d) of the Clean Water Act and requirements found in 40 CFR 130.7 to include the approved TMDL loads in the State’s waters quality management plans and VPDES permits. DEQ needs to adopt the WLA into the WQMPR to receive final EPA approval of the TMDL studies, which also addresses non-point sources of pollutants that need to be managed to remove the streams from the impaired waters list. The regulatory change broadly benefits the public by improving the water quality of impaired waters by identifying the maximum amount of pollutant load a stream can assimilate and meet WQS (9VAC25-260), to support all designated uses, and ultimately be removed from Virginia’s 303(d) list of impaired waters.</p> <p><u>Indirect Benefits:</u> Improved water quality will protect human health and aquatic life, resulting in healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic development, and producing edible and marketable natural resources, such as by commercial and recreational fishing industries.</p>	
(5) Information Sources	Benthic TMDL Development for Bailey Creek, Nuttree Branch, Oldtown Creek, Proctors Creek, Rohoic Creek, and Swift Creek Watersheds Located in Chesterfield, Dinwiddie, and Prince George Counties and Cities of Hopewell, Colonial Heights, and Petersburg.	

	PCB Total Maximum Daily Load Development for Mountain Run, Culpeper County, Virginia
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**Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)**

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p>The status quo could be maintained by not drafting or implementing the TMDL studies or not incorporating the WLAs into the WQMPR. However, State Water Control Law § 62.1-44.19:7 and section 303(d) of the Clean Water Act (implemented through 40 CFR 130.7(c)) mandates that DEQ develop TMDLs for pollutants entering impaired waters. DEQ must incorporate the WLA into the WQMPR to receive final approval from EPA for the TMDL study. The TMDL reports also address unregulated non-point sources of sediment, phosphorus, and PCBs which are not covered by the WQMPR, but crucial for removing streams from the impaired waters list. Also, maintaining the status quo would not improve water quality in impaired stream segments without TMDL studies because the pollution reductions necessary would be unknown and not be undertaken.</p> <p><u>Direct Costs</u> - No direct economic costs arise from maintaining the status quo since the regulation does not directly mandate any requirements.</p> <p><u>Indirect Costs</u> - Indirect costs cannot be monetized at this time. Without developing or implementing a TMDL study and WLA, DEQ will not quantify the point and non-point source pollutant reductions needed to improve water quality. The economic costs stem from impaired waterbodies failing to provide beneficial uses to the public overall, such as diminished recreation or fishing opportunities. The potential uses are too variable to monetarily estimate the economic impact of the reduced water quality.</p> <p><u>Direct and Indirect Benefits</u> –Under the status quo, certain permittees avoid costs associated with reducing sediment, phosphorus, and PCB discharges to meet the WLAs. The cost savings could not be monetized because the specific reductions needed, and the methods to make the reductions are not known until specific amounts and pollution reduction methods are determined through permit issuance or pollution reduction plans.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct &amp; Indirect Costs</p>	<p>Direct &amp; Indirect Benefits</p>
	<p>(a) Not applicable</p>	<p>(b) Not applicable</p>

(3) Net Monetized Benefit	Not applicable
(4) Other Costs & Benefits (Non-Monetized)	<p>Maintaining the status quo would not lead to improved water quality in the impaired water bodies. The status quo would not meet State Water Control Law § 62.1-44.19:7 and section 303(d) the Clean Water Act (implemented through 40 CFR 130.7(c)) requirements to develop a TMDL of pollutants that may enter the water for each impaired water body. Failing to proceed with TMDLs to address an impairment can also create the potential for legal action for failing to meet Clean Water Act requirements (see previous case <a href="#">American Canoe vs EPA</a>).</p> <p><u>Indirect Costs:</u> Without adopting the WLA into the WQMPR, EPA would not approve the TMDL study. Without an approved TMDL study, the non-point source reductions needed, which make up a large majority of the pollutants causing the impairments, would also not be identified, and addressed. Lack of an approved TMDL may prevent the public from accessing funds to develop BMPs that would reduce sediment, phosphorus, or PCBs into these impaired waters. Values are not available due to the large variability in BMPs, system sizes, locations, and beneficial uses. Indirect costs could come from the impacts of poor water quality on human health and aquatic life, resulting in poor fisheries, less reliable public water supplies, and negative economic costs to tourism, economic development, and commercial and recreational fishing industries.</p>
(5) Information Sources	<p>DEQ TMDL Program procedures, documents, and staff  <a href="https://law.justia.com/cases/federal/district-courts/FSupp2/30/908/2417146/">American Canoe vs EPA - https://law.justia.com/cases/federal/district-courts/FSupp2/30/908/2417146/</a></p>

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>No alternative approach to developing TMDL studies and WLA amounts was considered because State Water Control Law § 62.1-44.19:7 and section 303(d) of the Clean Water Act (implemented through 40 CFR 130.7(c)) requires DEQ to develop a TMDL study and incorporate WLAs into the WQMPR for each impaired water body to address point source discharges of pollutants into the water.</p> <p>However, DEQ has the flexibility to revisit a TMDL study to explore different WLA amounts. DEQ arrived at the proposed WLA amounts by analyzing alternative scenarios aiming to balance the pollutant levels among permitted point sources and unregulated non-point sources.</p> <p><u>Direct Costs:</u> DEQ would incur direct costs to reevaluate and change the TMDL studies to evaluate alternate WLA amounts. These costs would likely resemble those incurred during the original creation of the TMDL</p>
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	<p>study. The James River Tributaries TMDL study cost DEQ \$123,000, including contractual costs and an estimate of staff time, to develop allocation scenarios, complete project coordination and draft the document. Developing the Mountain Run PCB TMDL cost DEQ \$160,580, including contractual costs and an estimate of staff time. Revising the WLA could incur similar costs so the total to rewrite both TMDL reports could be approximately \$283,580 (excluding inflation adjustments) but may be lower considering that some parts of the TMDL reports would remain unchanged. Generating a different WLA would necessitate DEQ also repeating coordination with the public and obtaining EPA approval of any revisions.</p> <p><u>Indirect Costs:</u> Any alternate scenario must still achieve the same overall pollution reduction required to meet the WQS so a less stringent WLA is unlikely. A more stringent WLA amount could lead existing permittees to incur costs as facilities may need operational changes to reduce pollution discharges. The TMDL and WLA form a balanced equation, so allowing one source higher pollutant amounts shifts the cost burden of pollution controls to other permittees or non-point sources in the watershed.</p> <p><u>Direct Benefits:</u> No direct monetizable benefit is expected from considering alternate WLA scenarios. Any alternate scenario must still achieve the same overall pollution reduction required to meet the WQS so other sources would need to incur the costs to reduce pollutants, even if some permittees experience cost savings. These cost shifts may affect other permittees, municipalities, or non-point sources, such as agriculture.</p> <p><u>Indirect Benefits:</u> No indirect monetizable benefit from this alternative approach. Any alternate scenario would need to make the same overall pollution reduction to be consistent with the WQS.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) direct costs- \$283,580 (excluding inflation adjustments)	(b) Not Applicable
(3) Net Monetized Benefit	Not applicable	
(4) Other Costs & Benefits (Non-Monetized)	Considering less stringent alternative scenarios for point source pollution reduction could reduce costs and benefit permittees affected by the preferred scenario. However, those costs would be redistributed to other sources or permittees to achieve the pollution reductions necessary to meet WQS.	

(5) Information Sources	DEQ TMDL Program, James River Tributaries and Mountain Run PCB TMDL Scopes of Work. Personnel costs are calculated per budget planning formula used to estimate funding requests to EPA.

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Four localities (Chesterfield County and Cities of Hopewell, Colonial Heights, and Petersburg) may be affected since they also have MS4 permits and may incur costs to reduce sediment and phosphorus discharges to comply with the WLA established for the James River Tributaries TMDL. Overall, MS4 permittees, which includes these localities, are by far the largest contributors of these pollutants. These localities do not have a specific individual reduction target. Instead, the TMDL report aggregates reductions across all MS4 permittees which provides flexibility for these permit holders to address their share of the pollutant load and necessary reductions. In aggregate, MS4 permittees need to reduce their sediment discharges between 54.5% and 88.4%, depending on the watershed, to meet the WLA. Similarly, permitted MS4s in the Oldtown Creek, Rohoic Creek, and Swift Creek watersheds need to reduce phosphorus, in aggregate, between 73.3% and 98.8%, depending on the watershed. The localities would make up a portion of these overall reductions. Under their MS4 permits, each system is required to draft a TMDL Action Plan outlining the measures they will undertake to meet the WLA.</p> <p><u>Direct costs:</u> The WQMPR (9VAC 25-720) does not result in any direct monetizable costs to local partners. The regulation only lists the TMDLs and WLA, along with the impaired streams where it applies, but does not identify any facilities affected or mandate any measures that facilities must take to meet the WLA that would directly impose a cost.</p> <p><u>Indirect Costs:</u> The James River Tributaries TMDL generated WLAs that may result in sediment and phosphorus pollutant reductions affecting MS4 VPDES permitted localities. Their indirect costs cannot be precisely monetized at this time. DEQ cannot predict any specific permit reductions that will be determined later, or which pollution reduction options that the localities may incorporate into their action plans for each watershed and pollutant. By aggregating the WLA for MS4s, the TMDL</p>
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	<p>incorporates flexibility for these permit holders to address their share of the pollutant load and necessary reductions.</p> <p><u>Direct Benefits:</u> The proposed regulatory amendment does not have any monetizable direct benefits for local partners. The regulatory change broadly benefits the public by improving the water quality of impaired waters by identifying the maximum amount of pollutant load a stream can assimilate to meet WQS (9VAC25-260), support all designated uses, and ultimately be removed from Virginia’s 303(d) list of impaired waters.</p> <p><u>Indirect Benefits:</u> The proposed regulatory amendment does not have any monetizable indirect benefits. Improved water quality will protect human health and aquatic life, resulting in healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic development, and producing edible and marketable natural resources, such as by commercial and recreational fishing industries.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not Applicable	(b) Not Applicable
(3) Other Costs & Benefits (Non-Monetized)	Local partners will benefit from improved water quality that protects human health and aquatic life, resulting in healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic development, and commercial and recreational fishing industries utilized and enjoyed by their citizens.	
(4) Assistance	N/A	
(5) Information Sources	DEQ TMDL Program procedures, documents, and staff	

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs & Benefits (Monetized)	This regulation is not expected to have an impact on the institution of the family and family stability.
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not Applicable	(b) Not Applicable
(3) Other Costs & Benefits (Non-Monetized)	Improved water quality will protect human health and aquatic life, resulting in healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic development, and producing edible and marketable natural resources, such as by commercial and recreational fishing industries.	
(4) Information Sources	DEQ TMDL Program procedures, documents, and staff	

**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>State Water Control Law § 62.1-44.19:7 and the section 303(d) of the Clean Water Act (implemented through 40 CFR 130.7(c)) requires DEQ to develop a TMDL study and incorporate WLAs into the WQMPR for each impaired water body to address point source discharges of pollutants into the water.</p> <p>The Rohoic Creek TMDL affects three facilities with ISWGP considered small businesses. The TMDL report considers facilities with ISWGP as a group, which includes these small businesses and two other large businesses. As a group, facilities with ISWGP need to reduce sediment and phosphorus discharges by 50% overall to meet the WLA. The indirect costs associated with these reductions cannot be precisely quantified at this time because the specific reductions for each facility are not known until permit issuance and review of pollution reduction plans. Additionally, facilities have various pollutant reduction options available specific to their operations. By aggregating the WLA for these facilities, the TMDL incorporates flexibility for these permit holders to address their share of the pollutant load and necessary reductions.</p> <p>The Mountain Run PCB TMDL affects five facilities with ISWGP that are considered small businesses. These facilities with ISWGP permits need to reduce their PCB discharges between 2% and 86%, depending on the facility, to meet the WLA and achieve water quality standards. These facilities may incur indirect costs to reduce PCB discharges to comply with the established WLA. Under and ISWGP, facilities are required to</p>
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	<p>develop a Stormwater Pollution Prevention Plan (SWPPP) as part of their existing VPDES permit requirements. To meet their WLA, each will be required to incorporate a Pollution Minimization Plan (PMP), into their existing SWPPP. The PMP identifies sources of PCBs in their effluent, adaptive management practices they will carry out to reduce PCBs, and procedures to report their progress over time. The indirect costs associated with drafting and implementing a PMP cannot be precisely monetized at this time. DEQ cannot predict which pollutant reduction options facilities will incorporate into their PMPs since they have many alternatives specific to their operations. Remediation costs will vary depending on the extent of PCB found on the site and the methods chosen to address the pollutant.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not Applicable	(b) Not Applicable
(3) Other Costs & Benefits (Non-Monetized)	Not Applicable	
(4) Alternatives	none	
(5) Information Sources	DEQ TMDL Program procedures, documents, and staff	

**Changes to Number of Regulatory Requirements**

**Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

*Change in Regulatory Requirements*

<b>VAC Section(s) Involved*</b>	<b>Authority of Change</b>	<b>Initial Count</b>	<b>Additions</b>	<b>Subtractions</b>	<b>Total Net Change in Requirements</b>
9VAC25-720-60*	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	0	0	0	0
	<b>(D/R):</b>	0	0	0	0
9VAC25-720-70*	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	0	0	0	0
	<b>(D/R):</b>	0	0	0	0
				<b>Grand Total of Changes in Requirements:</b>	<b>(M/A):0</b>
					<b>(D/A):0</b>
					<b>(M/R):0</b>
					<b>(D/R):0</b>

*\*This regulation sets the total amount of a pollutant that a waterbody can receive and still meet water quality standards. The existence of a TMDL by itself does not impose statutory or discretionary regulatory requirements on anyone. DEQ implements TMDLs by imposing discharge limitations in permits issued in accordance with the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation (9 VAC 25 - 31), not through the Water Quality Management Planning Regulation (9VAC25-720). Discharge limitations imposed on VPDES permits are included in the regulatory baseline for the VPDES Permit Regulation (9 VAC 25 - 31). Counting these requirements here would double count regulatory requirements.*

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Cost Reductions or Increases (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Requirement</b>	<b>Initial Cost</b>	<b>New Cost</b>	<b>Overall Cost Savings/Increases</b>
NA	0	0	0	0

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Change</b>	<b>Overview of How It Reduces or Increases Regulatory Burden</b>
NA	NA	NA

*Length of Guidance Documents (only applicable if guidance document is being revised)*

<b>Title of Guidance Document</b>	<b>Original Word Count</b>	<b>New Word Count</b>	<b>Net Change in Word Count</b>
NA	NA	NA	NA

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

**TAB G**



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

**MEMORANDUM**

TO: State Water Control Board Members

FROM: Meghan Mayfield, Director Office of Water Permitting 

DATE: May 13, 2024

SUBJECT: Request to Adopt Final Amendments to the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192-10 et seq.)

**Introduction**

At the June 25, 2024 meeting, the Virginia Department of Environmental Quality (DEQ or the Department) staff intends to bring to the State Water Control Board (Board) a request to adopt the final amendments to the Virginia Pollution Abatement Regulation and General Permit for Animal Feeding Operations (AFO) and Animal Waste Management (9VAC25-192-10 et seq.) (VPA AFO Regulation and General Permit).

**Statutory Authority**

Section 62.1-44.17:1 of the Code of Virginia authorizes the Board to establish and implement the general permit for confined animal feeding operations having 300 or more animal units and utilizing a liquid manure collection and storage system. This Code section includes provisions that the Board must, at a minimum, include in its regulations for permitting confined animal feeding operations under a general permit, and in some cases limits the scope of this general permit.

## **Background**

The VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192-10 et seq.) first became effective on November 16, 1994, with the term of the general permit being ten (10) years. Since 1994, the regulation has been reissued two times, the last becoming effective on November 16, 2014. This regulatory action will authorize the third ten (10) year term of the general permit § 62.1-44.15 (5a) of the Code of Virginia.

There are currently 108 animal feeding operations covered under the general permit. This regulation governs the pollutant management activities of animal wastes at animal feeding operations not covered by an individual VPA permit or a Virginia Pollutant Discharge Elimination System permit, as well as animal waste utilized or stored by animal waste end-users.

Permitted animal feeding operations may operate and maintain treatment works for waste storage, treatment, or recycling, and may perform land application of manure, wastewater, compost, or sludges. The general permit is the primary permit mechanism used to cover animal feeding operations which confine livestock, such as, but not limited to, swine, sheep, and dairy and beef cattle across the Commonwealth.

## **Notice of Intended Regulatory Action and Technical Advisory Committee**

A Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register of Regulations on January 30, 2023. A 60-day public comment period followed which ended on March 31, 2023. The majority of the 10 commenters were requesting to participate on the Technical Advisory Committee (TAC) and in favor of reissuing the general permit in 2024. The comments can be found in the Public Comment section of the Agency Background Document (Form TH-09) that is attached to this memo.

The Department utilized the participatory approach by forming an ad hoc TAC. The Department held two (2) public noticed meetings on June 21, 2023 and July 12, 2023. A list of the members of the TAC is attached to this memo. The TAC discussed proposed amendments to the regulation, which included defined terms, groundwater monitoring requirements, animal waste storage requirements, Nutrient Management Plan (NMP) submittal (by the permittee), and conditions applicable to the permit found in Part II of the general permit. The regulation with final amendments is attached, with added text underlined and deleted text struck through. A concise list of the amendments is provided in the Detail of Changes section of the TH-09.

## **Amendments for Final Regulation**

A summary of amendments can be found below and are in the following major subject areas: defined terms, groundwater monitoring requirements, animal waste storage requirements, NMP submittal (by the permittee), and conditions applicable to the permit found in Part II of the general permit.

### Defined Terms

The proposed amendments to Section 10 (9VAC25-192-10. Definitions.) included the addition of five new defined terms, moving the definitions of two terms from other sections in the regulation to the section, and revising five definitions. The new defined terms included: “general permit,” “land application,” “permittee,” “State Water Control Law,” and “treatment works.” The terms “local government ordinance form” and “seasonal high water table” are currently defined multiple times in various sections of the regulation. The proposed amendments moved the definitions to Section 10.

The five defined terms that already exist in the current regulation include: “agricultural stormwater discharge,” “animal feeding operation,” “confined animal feeding operation,” “director,” and “nutrient management plan.” The proposed amendments made the definitions consistent with the State Water Control Law, other regulations, and the amendments proposed during this regulatory action.

The additions and amendments to the definitions section will facilitate a better understanding of the terms used throughout the regulation. These amendments will also make this regulation consistent with the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-10 et seq.). The members of the TAC generally supported the addition of terms and amendments to the definitions.

DEQ made no changes to these amendments following the receipt of public comments on the proposed regulation.

### Groundwater Monitoring Requirements

The proposed amendments included adding two conditions to the groundwater monitoring requirements for the permittee. One describes when a permittee is required to submit a groundwater monitoring action plan. The Department currently requests that a permittee prepare a groundwater monitoring plan when monitoring results for any monitored parameter demonstrate potential noncompliance; adding it to the permit conditions codifies the requirement. The members of the TAC generally supported the addition of the condition.

The second permit condition outlines which parameters must be analyzed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program (VELAP). Laboratory accreditation is required before any environmental analyses performed by a commercial environmental laboratory may be used for the purposes of the State Water Control Law. 1VAC30-46-20. Since this requirement is already in place; adding it to the permit conditions makes the requirement clear to the permittee. The members of the TAC generally supported the addition of the condition.

DEQ made no changes to these amendments following the receipt of public comments on the proposed regulation.

### Animal Waste Storage Requirements

The proposed amendments included the addition of language to specify that federal maps are to be used to determine the 100-year floodplain when siting waste storage facilities. The addition of this language will make this regulation consistent with the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-10 et seq.). The members of the TAC generally supported the amendment.

The proposed amendments to the general permit outlined what is considered adequate storage of semi-solid and solid waste. This language provides clarification to the permittee. The members of the TAC generally supported the amendment of these conditions.

The proposed amendments included a new special condition that addresses situations where animal waste storage can be threatened by emergencies such as fire or flood. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP so long as land application information is documented, and the Department is notified. This condition provides permittees with clear requirements related to waste storage and land application when the permittee is faced with an emergency. The addition of this permit condition will make this regulation consistent with the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-10 et seq.). The members of the TAC generally supported the addition of the condition.

The proposed amendments require notification to the Department prior to the closure of a liquid waste storage facility. This notification is an addition to an existing permit condition related to the closure of a waste storage facility. Adding this notification will facilitate the ability for Department staff to provide compliance assistance and proper closure procedures to the permittee. The members of the TAC generally supported the addition of the condition.

DEQ made no changes to these amendments following the receipt of public comments on the proposed regulation.

#### NMP Submittal (by the permittee)

The proposed amendments added a requirement for the permittee to submit revised NMPs approved by the Virginia Department of Conservation and Recreation (DCR) before the expiration date of the previous NMP. The permittee is currently required to provide a copy of the approved NMP with the registration statement, and Department practice has been to require subsequent submittal of the current DCR-approved NMP, following revisions. The addition of this language was focused on making the requirement clear to the permittee. The members of the TAC generally supported the addition of the condition.

Following public comment, DEQ modified the requirement to specify that the NMP shall be submitted to DEQ within 30 days after DCR approves the plan. See further information detailed below in the Public Comments and Public Hearing and Changes Made to Regulation After Proposed Stage summaries.

### Permit Conditions (Part II of the General Permit)

The proposed amendments re-organized and renumbered the conditions found in Part II of Section 70 (the contents of the general permit). The amendments to Part II will make this regulation consistent with the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-10 et seq.). The members of the TAC generally supported the amendment of these conditions.

DEQ made no changes to these amendments following the receipt of public comments on the proposed regulation.

### **Public Comments and Public Hearing**

The proposed amendments were noticed for public comment on January 15, 2024. One public hearing was held on March 5, 2024. One citizen attended the hearing and presented comments. Upon the closing of the comment period on March 15, 2024, staff received comments from six individuals and organizations regarding the proposed amendments, one of the organizations submitted comments on behalf of four other environmental organizations.

The three farmers who submitted comments are small business owners and operators. Their comments supported the reissuance of the general permit for another 10-year period; the continuation of provisions to manage a manure storage facility in the event of an imminent breach due to no fault of the manager; and the allowance for the land application of manure in an emergency. They stated their opposition to mandatory groundwater monitoring and asked the department to consider only making changes to the permit requirements that are rooted in science; acknowledge the volatility in the livestock industry; and noted that farmers will need time to fund any changes to their operations if additional requirements are made to the permit requirements.

Comments were received from one agricultural organization representing its members. The comments were supportive of the following proposed changes:

- to the continuation of the general permit language;
- the addition of the groundwater monitoring action plan and the laboratory accreditation conditions;
- the addition of the waste storage siting and closure conditions; and
- the emergency requirements for land application condition.

The agricultural organization was opposed to the following:

- increasing the minimum freeboard at all waste storage impoundments;
- establishing groundwater parameters and monitoring for bacteria species;
- requiring semi-annual or annual groundwater monitoring and additional well locations;
- requiring electronic or digital submission of groundwater monitoring data;
- performing annual liner integrity inspections for in-ground impoundments;
- closing unlined or compacted soil earthen waste storage facilities constructed prior to December 1, 1998;

- closing all existing manure impoundments that are in close proximity to surface water or groundwater, that sit in groundwater, or are located within the one-hundred (100) year floodplain;
- requiring stream exclusion fencing and vegetated buffers for pastures;
- requiring electronic or digital NMP submission to DEQ; and
- the submission of revisions to the NMP prior to the expiration of the previous NMP.

The comments from one of the environmental organizations were supportive of the concept of the groundwater monitoring corrective action plan; and the new requirement to submit all revised NMPs to the department.

The comments from one of the environmental organizations requested further changes including:

- excluding the use of covered lagoons or digesters from coverage under the general permit;
- requiring surface water monitoring;
- increasing groundwater, soil and waste monitoring and adding parameters;
- increasing the land application buffers;
- refining the exception for severe-weather-related land application of animal waste;
- requiring animal waste sludge surveys;
- defining “25 year, 24 hour storm”;
- expanding information submitted with the registration statement;
- expanding public notice requirements;
- requiring NMPs to be updated and certified annually;
- requiring submittal of monitoring results and extending the timeframe to maintain;
- improving closure requirements;
- extending the timeframe to maintain records; and
- improving the notification of unauthorized discharges.

The comments from another environmental organization requested further changes including:

- requiring groundwater monitoring wells for all earthen lagoons;
- requiring at least two downgradient groundwater monitoring well;
- increasing the frequency of monitoring to monthly;
- making groundwater results available to the public and requiring electronic reporting;
- adding monitoring for E. Coli, Cryptosporidium, and Giardia lamblia bacteria;
- adding limits for the Nitrates and bacteria;
- adding limits for Ammonia Nitrogen and Nitrate Nitrogen;
- adding non-detect limits for bacteria;
- requiring liner integrity testing and monthly inspections;
- expanding basic liner requirements to all earthen lagoons built before 1994;
- adding new language and restrictions based on EPA environmental justice indices; and
- defining terms related to emergencies.

The comments from one of the environmental organizations were supportive of: the concept of the corrective action plan; and the new requirement to submit all revised NMPs to the department.

The comments received along with the Department's detailed response to the comments can be found in the Public Comment section of the attached Agency Background Document.

### **Changes Made to Regulation Since Proposed Stage**

Department staff made two changes to the proposed amendments for the final regulation:

1. Amending subsection C of 9VAC25-192-50, relating to the continuation of general permit coverage [removes unnecessary language (“the following applies”) and amends language based on the authority of the State Water Control Board (deleted “board” - replaced with “department” where appropriate)]; and
2. Amending in subdivision C 2 of Parts I and II of 9VAC25-192-70 based on public comment about the timing of the NMP revision submittal (requiring the permittee to submit the NMP to the department within 30 days of its approval by the Department of Conservation and Recreation). This ensures the timeframe to utilize the NMP is not artificially shortened and addresses any issues with timing related to the development or approval of the NMP that are beyond the control of the permittee.

The department received comments requesting the addition of monitoring, testing, construction requirements, and other limitations that are not within the scope of the board's authority and requirements for permittees as set forth in the enabling law for the VPA AFO Regulation and General Permit. Because these are not within the stated requirements and limitations, the department is not making any changes in response to the comments.

For more detailed information regarding all changes to the regulation, please see the attached VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192) and Agency Background Document.

### **Staff Recommendation**

After making a presentation on the above issues and answering any questions the Board may have, staff will ask the Board to adopt the final amendments for the VPA Regulation and General Permit Animal Feeding Operations and Animal Waste Management.

### **Attachments**

1. VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management Technical Advisory Committee Members
2. Exempt Action Final Regulation Agency Background Document (Form TH-09)
3. 9VAC25-192-10 et seq. Virginia Pollution Abatement Regulation and General Permit for Animal Feeding Operations and Animal Waste Management Final Amendments

4. Office of Regulatory Management (ORM) Economic Review Form
5. VPA AFO GP - Animal Waste Fact Sheet (for use by unpermitted end-users of animal waste transferred from a permitted AFO) - effective 11/2024
6. VPA General Permit for Animal Feeding Operations and Animal Waste Management AFO Owner Registration Statement Form (permit application form)
7. VPA General Permit for Animal Feeding Operations and Animal Waste Management End-User Registration Statement Form (permit application form)
8. Local Government Ordinance Form - effective 11/2024

### **Contact Information**

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Animal Feeding Operations and Animal Waste Management Regulation and  
General Permit  
**Technical Advisory Committee Members, Alternates and Technical Support**

Committee/Agency Lead:

Betsy K. Bowles – Animal Feeding Operations Program Coordinator

Agricultural Organization:

Robert O. Britt – Virginia Pork Council

Brad Copenhaver or Cliff Williamson – Virginia Agribusiness Council

Eric Paulson – Virginia State Dairymen's Association

Jim Riddell – Virginia Cattlemen's Association

Stefanie Taillon or Tony Banks – Virginia Farm Bureau Federation

Farmer:

Jeremy Moyer – Oakmulgee Dairy Farm

Roy Van Der Hyde – Van Der Hyde Dairy Farm

Michael Wright – Oakland Farm

Environmental:

Patrick J. Fanning or Joe Wood – Chesapeake Bay Foundation

Mark Frondorf – Shenandoah Riverkeeper

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Technical Support to TAC from Other State Agencies:

DCR: Seth Mullins

VDACS: Darrell Marshall



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-192-10 et seq.
<b>VAC Chapter title(s)</b>	Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management
<b>Action title</b>	<b>2024 Reissue and amend, as necessary, the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management</b>
<b>Final agency action date</b>	June 25, 2024
<b>Date this document prepared</b>	April 19, 2024

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The State Water Control Board (Board) is taking this action to reissue and amend, as necessary, the existing Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9VAC25-192-10 et seq.). Section 62.1-44.17:1 of the Code of Virginia, states that the Board shall adopt a general VPA permit to cover animal feeding operations having 300 or more animal units (as defined in 9VAC25-192-10) utilizing a liquid manure collection and storage system. The current VPA regulation and general permit expires on November 15, 2024. This regulation governs the pollutant management activities of animal wastes at animal feeding operations not covered by a Virginia Pollutant Discharge Elimination System permit and animal waste utilized or stored by animal waste end-users. These animal feeding operations may operate and maintain treatment works

for waste storage, treatment, or recycling and may perform land application of manure, wastewater, compost, or sludges.

The general permit is the primary permit mechanism used to cover animal feeding operations which confine livestock (300 or more animal units) such as, but not limited to, swine, dairy and beef cattle across the Commonwealth. During this action, language will be amended to update the incorporation by reference date of 40 CFR references in the regulation as necessitated by changes to the Federal Rules.

**Mandate and Impetus**

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

The impetus of the regulatory change is § 62.1-44.15 (5a) of the Code of Virginia, which states, "All certificates issued by the Board under this chapter shall have fixed terms. ... The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years." The general permit issued through this regulation must be reissued in order to meet the requirements of § 62.1-44.17:1 of the Code of Virginia and continue the general permit coverage of confined animal feeding operations. This regulation expires on November 15, 2024, and must be reissued to cover the existing animal feeding operations and any new animal feeding operations. There are currently 108 animal feeding operations covered under the general permit. If the regulation is not reissued in a timely manner, the operations that are covered under the general permit as well as any new operations that need a permit will be required to seek coverage under an individual VPA permit, which require more time to develop and issue, and impose a greater burden and costs on permittees and increased administrative burden on DEQ.

**Acronyms and Definitions**

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

- AFO - Animal Feeding Operations
- Board - State Water Control Board
- CAFO - Concentrated Animal Feeding Operations
- CFR - Code of Federal Regulations
- DCR - Department of Conservation and Recreation
- DEQ or department - Department of Environmental Quality
- NMP - Nutrient Management Plan
- VPA - Virginia Pollution Abatement

**Statement of Final Agency Action**

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

On June 25, 2024, the Department of Environmental Quality staff will recommend that the State Water Control Board adopt the final amendments to the Virginia Pollution Abatement Regulation and General Permit for Animal Feeding Operations and Animal Waste Management as presented.

**Legal Basis**

*Identify (1) the agency or other promulgating entity, 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 entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.*

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In 1994, the Virginia General Assembly passed House Bill 222 (1994 Acts of Assembly Chapter 698, codified as § 62.1-44.17:1 of the Code of Virginia) establishing the general permit for confined animal feeding operations (AFOs). The Act required the Board to adopt the general permit, establish provisions for issuing the general permits and establish criteria for the design and operation of the confined AFOs. Section 62.1-44.17:1 of the Code of Virginia authorizes the Board to establish and implement the general permit for confined AFOs having 300 or more animal units. The regulation and general permit first became effective on November 16, 1994. Since 1994, the regulation has been reissued two more times, the last becoming effective on November 16, 2014. Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act (§ 2.2-4006 A 8 of the Code of Virginia).

### **Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.*

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The purpose of this regulatory action is to reissue and amend, as necessary, the existing Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management. This regulation expires on November 15, 2024, and must be reissued to make general permit coverage available to the existing animal feeding operations and any new animal feeding operations. This action will maintain permitting requirements for pollutant management activities associated with animal wastes at animal feeding operations that are not covered by a Virginia Pollutant Discharge Elimination System permit and animal waste utilized or stored by animal waste end-users. The goal is to update the regulation and the permit to be consistent with the other VPA general permit for poultry waste management (9VAC25-630) and to protect water quality.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

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This action is primarily a reissuance of the existing general permit regulation and does not include significant changes; however, the following items are included in this regulatory action:

1. Definitions. The amendments include the addition of five new defined terms, the inclusion in Section 10 of two already defined terms, and the revisions to five defined terms. The additions and amendments to the definitions section will facilitate a better understanding of the terms used throughout the regulation sections.
2. Groundwater monitoring requirements. The amendments include two revisions to the groundwater monitoring requirements for the permittee, including:
  - a. Adding of a permit condition that describes when a permittee is required to submit a groundwater monitoring action plan; and
  - b. Specifying which parameters must be analyzed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program.
3. Animal Waste Storage Requirements. The amendments include conditions applicable to animal waste storage, including:
  - a. Clarifying which tools are to be used to determine the floodplain when siting waste storage facilities;
  - b. Providing specific permit conditions to outline what is considered adequate storage of semi-solid and solid waste;
  - c. Adding a permit condition that addresses situations where animal waste storage can be threatened by emergencies such as fire or flood; and
  - d. Requiring notification to the department prior to the closure of a liquid waste storage facility.
4. Nutrient Management Plan (NMP) Submittal. The amendments require the permittee to submit NMP revisions approved by DCR to the department within 30 days of the DCR approval.
5. Permit Conditions in Part II of the general permit. The amendments to Part II include amending, re-organizing and renumbering requirements that are applicable to all VPA general permits to make the regulation consistent with the VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-10 et seq.).
6. Continuation of permit coverage. The amendments remove the dates of prior permit regulations and make the section consistent with language in the VPA Regulation and General Permit for Poultry Waste Management.
7. Documents incorporated by reference. The amendments update the incorporation by reference date of 40 CFR references in the regulation.

## Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

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The primary advantage of the regulatory action is the reissuance of the regulation that will allow for animal feeding operations to be covered under a general permit instead of each animal feeding operation having to apply for coverage under an individual permit. The general permit contains provisions appropriate for the protection of state waters, while limiting the time and resources required for an animal feeding operation to register for permit coverage. This is an advantage for the public, the regulated community, and the Commonwealth. There are no disadvantages of the proposed regulatory action.

## Requirements More Restrictive than Federal

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

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There are no applicable federal requirements for animal feeding operations that do not discharge or propose to discharge to state waters. The VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management is a state program with requirements included in the regulation necessary to meet state statutory requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

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Other State Agencies Particularly Affected

This general permit regulation affects the Virginia Department of Conservation and Recreation since this regulation includes requirements for Nutrient Management Plans. The requirements for developing Nutrient Management Plans fall under the purview of the Virginia Department of Conservation and Recreation.

Localities Particularly Affected

This general permit regulation affects the entire state; no localities are identified to be particularly affected by this regulatory action.

Other Entities Particularly Affected

This general permit regulation affects the permitted livestock growers and unpermitted and permitted end-users of animal waste. No other entities are identified to be particularly affected by this regulatory action.

**Public Comment**

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

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This permit regulation continues to be needed to cover over 100 permitted animal feeding operations across the Commonwealth.

During the 60-day comment period for the proposed regulation, the department received comments from three farmers, one agricultural organization, and one environmental organization and another environmental organization that submitted comments on behalf of four other environmental organizations. The three farmers who submitted comments are small business owners and operators. They stated their support for the reissuance of the general permit for another 10-year period; the continuation of provisions to manage a manure storage facility in the event of an imminent breach due to no fault of the manager; and the allowance for the land application of manure in an emergency. They also stated their opposition to mandatory groundwater monitoring and asked the department to consider only making changes to the permit requirements that are rooted in science; consider the volatility in the livestock industry; and acknowledge that farmers will need time to fund any changes to their operations if changes are made to the permit requirements.

The comments from the agricultural organization were supportive of the proposed changes to the continuation of the general permit language; the addition of the groundwater monitoring action plan and the laboratory accreditation conditions; the addition of the waste storage siting and closure conditions;

and the emergency requirements for land application condition. The agricultural organization was opposed to increasing the minimum freeboard at all waste storage impoundments; establishing groundwater parameters and monitoring for bacteria species; requiring semi-annual or annual groundwater monitoring and additional well locations; requiring electronic or digital submission of groundwater monitoring data; performing annual liner integrity inspections for in-ground impoundments; closing unlined or compacted soil earthen waste storage facilities constructed prior to December 1, 1998; closing all existing manure impoundments that are in close proximity to surface water or groundwater, that sit in groundwater, or are located within the one-hundred (100) year floodplain; requiring stream exclusion fencing and vegetated buffers for pastures; requiring electronic or digital NMP submission to DEQ and the submission of revisions to the NMP prior to the expiration of the previous NMP.

The comments from one of the environmental organizations were supportive of the concept of the groundwater monitoring corrective action plan and the new requirement to submit all revised NMPs to the department. They requested changes including: excluding the use of covered lagoons or digesters from coverage under the general permit; requiring surface water monitoring; increasing groundwater, soil and waste monitoring and adding parameters; increasing the land application buffers; refining the exception for severe-weather-related land application of animal waste; requiring animal waste sludge surveys; defining the 25 year, 24 hour storm; expanding information submitted with the registration statement; expanding public notice requirements; requiring NMPs to be updated and certified annually; requiring submittal of monitoring results and extending the timeframe to maintain; improving closure requirements; extending the timeframe to maintain records; and improving the notification of unauthorized discharges.

The comments from another environmental organization requested further changes including: requiring groundwater monitoring wells for all earthen lagoons; requiring at least two downgradient groundwater monitoring wells; increasing the frequency of monitoring to monthly; making the results available to the public and requiring electronic reporting; adding monitoring for E. Coli, Cryptosporidium, and Giardia lamblia bacteria; adding limits for the Nitrates and bacteria; adding limits for Ammonia Nitrogen and Nitrate Nitrogen; adding non-detect limits for bacteria; requiring liner integrity testing and monthly inspections; expanding basic liner requirements to all earthen lagoons built before 1994; adding new language and restrictions based on EPA environmental justice indices; and defining terms related to emergencies. Their comments were supportive of the concept of the corrective action plan; and the new requirement to submit all revised NMPs to the department.

The following are the comments received along with the Department’s response to the comments.

Commenter	Comment	Agency response
Jeremy Moyer	Please keep the wording of the general AFO permit similar to what it has been for the last decade. If any changes are made please make them rooted in scientifically proven information. Increasing the regulatory burden on businesses that are following the rules and caring for the land that their livelihood depends on is not practical.	Thank you for your comments, support, and your participation on the Technical Advisory Committee.  Revisions to the wording in the permit have been made, in many cases, to make it consistent with requirements in the base regulation, the Virginia Pollution Abatement (VPA) Permit Regulation, 9VAC25-32, and Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management, 9VAC25-630. Consistency among the VPA programs will help the regulated community by increasing efficiency and familiarity with regulatory requirements. Detailed information about the changes to the regulation are provided in the Details

Commenter	Comment	Agency response
		<p>of All Changes section of this document.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Kyle Leonard</p>	<p>We are a family owned and operated dairy and poultry farm in the Shenandoah Valley. We believe there should continue to be provisions to manage a manure storage facility in the event of an imminent breach due to no fault of the manager. Land application of manure needs to be allowed in an emergency. We work closely with the local DCR office to implement our nutrient management plan and have always contacted them if our application of manure is necessary outside of the plan guidelines. We also oppose mandatory groundwater monitoring. Most streams are actually monitored voluntarily. Our children were involved in stream water monitoring projects while they were in public schools. There are also a number of environmental groups that are actively monitoring streams for excessive levels of fecal bacteria. Please consider these thoughts when considering the new VPA and CAFO rules and please make the permit good for a 10 year period.</p>	<p>Thank you for your comments and support.</p> <p>Amendments to Part I C 5 and Part III C 5 of 9VAC25-192-70 and 9VAC25-192-90 C 4 allow a permittee to land apply animal waste outside of the spreading schedule outlined in the NMP in cases where the waste storage facility is threatened by emergencies such as fire or flood or where these conditions are imminent.</p> <p>Section 62.1-44.17:1.E.4. of the Code of Virginia specifies which waste storage facilities and under what conditions that groundwater monitoring will be required by the regulatory program (general permit):  <i>E.4. The operation shall be monitored as follows: ... (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement permit that required ground water monitoring shall continue such monitoring.</i></p> <p>Requiring groundwater monitoring wells at all liquid waste storage facilities and spray fields is inconsistent with the requirements established by the Code of Virginia and is not required in the general permit regulation.</p> <p>The permit term is established by § 62.1-44.15 (5a) of the Code of Virginia, which states:  <i>All certificates issued by the Board under this chapter shall have fixed terms. ... The term of a Virginia Pollution Abatement permit shall not exceed 10 years, except that the term of a Virginia Pollution Abatement permit for confined animal feeding operations shall be 10 years.</i></p>

Commenter	Comment	Agency response
		<p>The permit term will be 10 years, from November 16, 2024 to November 15, 2034.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Leigh Pemberton</p>	<p>I support continuing the 10 year livestock permit. With the volatility in the livestock industry farmers need time to fund permitting changes to their operations.</p>	<p>Thank you for your comments and support.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p>The Virginia Farm Bureau Federation (VFBF) appreciates the opportunity to submit comments to the Department of Environmental Quality (DEQ) on the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management [9 VAC 25 - 192].</p> <p>Virginia Farm Bureau is the Commonwealth’s largest general farm organization, representing more than 33,000 farmers of nearly every type of crop and livestock across Virginia. Farm Bureau and its members have worked together to build a sustainable future of safe and abundant food, fiber, and renewable fuel for the United States and the world.</p> <p>VFBF appreciates being involved on the Technical Advisory Committee (TAC) and the Department’s work to update the General Permit for Animal Feeding Operations for renewal ahead of its expiration on November 15th, 2024.</p>	<p>Thank you for your comments.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p>Farm Bureau concurs with the consensus recommendations of the Technical Advisory Committee.</p> <p><i>9VAC25-192-50.C. Continuation of general permit coverage</i></p> <p>VFBF supports the proposed changes, as these are necessary in the event where the board, through no fault of the owner of permittee, does not issue the next consecutive general permit with an effective date on or before the expiration date of the expiring general permit to allow the permittee to continue operating under the 2024 VPA coverage. This change is needed to avoid a lapse in permit coverage and will allow the permittee to continue business operations while waiting for any requirements of the next general permit to take effect.</p>	<p>Thank you for your comments and support.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p><i>9VAC25-192-70 Contents of the general permit, Part I.A. Pollutant Management and monitoring requirements</i></p>	<p>Thank you for your comments and support.</p>

Commenter	Comment	Agency response
	<p>We support the addition of subsection six (6) which reflects the Department’s practice of requiring submission of a groundwater monitoring action plan within 30 days of the permittee obtaining potential noncompliant groundwater monitoring results. We also support subsection seven (7) which clarifies that analysis of the groundwater samples for ammonia nitrogen and nitrate nitrogen shall be performed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program.</p>	<p><b>No changes are being proposed to address these comments.</b></p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p>Under 9VAC25-192-70. Contents of the general permit. B. Site design, storage, and operations requirements, we support the following:</p> <ul style="list-style-type: none"> <li>• Subsection two (2) clarifying how the one-hundred (100) year floodplain is determined when siting a waste storage facility.</li> <li>• Subsection 8.d which clarifies the siting and storage requirements for semi-solid and solid animal wastes that are not stored in a waste storage facility or under roof.</li> <li>• Subsection eleven (11) clarifying requirements during closure of a liquid waste storage facility.</li> </ul>	<p>Thank you for your comments and support.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p><i>9VAC25-192-70. Contents of the general permit. C. Animal waste use and transfer requirements</i></p> <p>We support subsection five (5) which allows and stipulates how animal waste may be land applied when a waste storage facility is threatened by an emergency or faces imminent danger from conditions conducive to an emergency.</p>	<p>Thank you for your comments and support.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p><i>9VAC25-192-70. Contents of the general permit. Part II Conditions Applicable to all VPA Permits this General Permit</i></p> <p>We support K. Bypass 1-3. which provides emergency bypass provisions to help protect the human health and life and prevent waste storage facility and other property damage.</p>	<p>Thank you for your comments and support.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p>Some members of the TAC recommended changes that were either not accepted by consensus of the TAC or the Department deemed as already covered by the general permit, outside the purview of the general permit, or was not authorized by statute and those recommendations were not included in the proposed rule by the Department. We concur with DEQ’s stated reasons for the omission of the following suggested changes to this general permit:</p>	<p>Thank you for your comments and support.</p> <p><b>No changes are being proposed to address these comments.</b></p>

Commenter	Comment	Agency response
	<ul style="list-style-type: none"> <li>• Increasing the minimum free board height of all waste storage impoundments</li> <li>• Establishing groundwater parameters and monitoring for bacteria species</li> <li>• Requiring semi-annual or annual groundwater monitoring and additional well locations</li> <li>• Requiring electronic or digital submission of groundwater monitoring data</li> <li>• Perform annual liner integrity inspections for in-ground impoundments</li> <li>• Close unlined or compacted soil earthen waste storage facilities constructed prior to December 1, 1998</li> <li>• Close all existing manure impoundments that are in close proximity to surface water or groundwater, that sit in groundwater, or are located within the one-hundred (100) year floodplain</li> <li>• Require stream exclusion fencing and vegetated buffers for pastures</li> <li>• Require electronic or digital Nutrient Management Plan submission to DEQ</li> </ul>	
<p>Virginia Farm Bureau Federation - Jake Tabor</p>	<p>The Virginia Farm Bureau Federation respectfully submits these comments and appreciates the Administration’s attention to this issue.</p>	<p>Thank you for your comments.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Virginia Farm Bureau Federation – Tony Banks</p>	<p>As a member of the Technical Advisory Committee that reviewed Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management [9VAC25-192], I am disappointed to learn of the following newly proposed requirement:  <b>9VAC25-192-70 - Part I C 2. was Part I B 12. &amp; Part III C 2.</b>  <del>42- 2.</del> The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the <del>plan</del> <u>NMP</u> on site. <u>All revised and Department of Conservation and Recreation approved NMPs shall be submitted to the department prior to the expiration of the previous NMP.</u> The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground <u>waters</u> and surface waters. The terms of the NMP shall be enforceable through this <u>general</u> permit. The NMP shall contain at a minimum the following information:</p>	<p>Thank you for your comments and for your participation on the Technical Advisory Committee.</p> <p><b>The following changes address this comment.</b></p> <p>DEQ staff amended the regulatory language to require the submittal 30 days after the NMP is approved to make sure the timeframe to utilize the NMPs are not artificially shortened and address any issues with timing related to the development or approval of the NMP that are beyond the control of the permittee. The revised condition reads:</p> <p>“Within 30 days of the approval by the DCR, all revised NMPs shall be submitted to the department.”</p>

Commenter	Comment	Agency response
	<p>a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;</p> <p>b. Site evaluation and assessment of soil types and potential productivities;</p> <p>c. Nutrient management sampling, including soil and waste monitoring;</p> <p>d. Storage and land area requirements;</p> <p>e. Calculation of waste application rates; and</p> <p>f. Waste application schedules.</p> <p>I attended each of the TAC meetings and do not recall the TAC ever being questioned about this proposed change, much less ever being provided an opportunity to discuss it with affected agencies, industry stakeholders and permittees. Virginia Farm Bureau does not support the proposed requirement to submit the nutrient management plan (NMP), specifically the part that states: <u>prior to the expiration of the previous NMP</u> that was added in 9VAC25-192-70. Farmers have no control over the completion of the NMP, or the approval process with DCR of their NMPs. Requiring the submittal of the NMP prior to the expiration date of the previous NMP will put an unnecessary burden on the farmers, the nutrient management plan writers, the one staff person with the Department of Conservation and Recreation that approves the NMPs and the DEQ staff. As you are aware, it is not uncommon for NMPs to be modified during a single growing season to accommodate cropping changes that result due to weather-related planting delays, sudden changes in farm crop prices, and supply chain disruptions impacting the availability of seed, pesticides, and other crop inputs, or changes in annual cropland rental or purchases. The agency should remove the specific timing of the submission from the proposal because the proposed language will be a paperwork nightmare for the farmers trying to maintain compliance and for the DEQ staff trying to determine compliance. Additionally, if this requirement is added to this regulation which currently covers 110 permitted operations (as reported in the agency background document) it will likely be added to the poultry regulation which will then affect around 900 permitted poultry growers. For years the DEQ staff have collected the NMP while onsite, this has worked well for the agency and the farmers since it allows the DEQ staff to go over the NMP with the farmer while onsite. DEQ staff can always</p>	

Commenter	Comment	Agency response
	<p>ask the farmer to send the NMP if they need it sooner than during the inspection. Virginia Farm Bureau appreciates the opportunity the TAC offers the regulated community and DEQ to review and discuss regulations and proposed changes. However, we were not given the opportunity to discuss this proposed change, if we had, I believe both the permittees and agencies staff would concur with my comments above. Thank you for this opportunity to comment.</p>	
<p>Southern Environmental Law Center</p>	<p>The Southern Environmental Law Center submits the following comments on the reissuance and amendment of the Virginia Pollution Abatement (VPA) regulation and general permit for animal feeding operations and animal waste management (9 VAC 25-192) by the Department of Environmental Quality (DEQ). Several key changes should be made to the proposed regulation and general permit to protect communities and the environment from the impacts of animal feeding operations and associated animal waste management activities. In addition to the recommendations below, we also support the comments submitted by the Environmental Integrity Project, Potomac Riverkeeper Network, Waterkeepers Chesapeake, Chesapeake Bay Foundation, and James River Association.</p>	<p>Thank you for your comments. DEQ responses are below.</p>
<p>Southern Environmental Law Center</p>	<p>I. Animal feeding operations pose significant threats to water quality and public health. Over the past few decades, the livestock industry has transitioned from small, family-owned farms to large, industrial operations confining thousands, hundreds of thousands, or even millions of animals. One of the most significant public health and environmental threats posed by animal feeding operations is the extraordinary amount of waste they produce. This waste ultimately pollutes surface waters and groundwater, which can be an important source of drinking water for rural residents, and leads to adverse public health outcomes. Contaminants in livestock waste include nutrients, such as phosphorus, nitrogen, and ammonia; pharmaceuticals, such as the antibiotics that facilities use to combat unsanitary living conditions and promote rapid growth; heavy metals, including zinc and copper; and disease-causing pathogens. These contaminants can pollute surface waters through “spills and other dry-weather discharges, overflows from storage ‘lagoons,’ and discharges to the air[,]” as well as through the “land application of manure, litter,</p>	<p>DEQ acknowledges your concerns about environmental threats posed by animal feeding operations. The Board’s authority to implement a program for animal feeding operations is set out in and limited by the authority granted to it by the legislature in § 62.1-44.17.1 of the Code of Virginia. The general permit and amendments to it that are part of this regulatory action are within the Board’s authority.</p>

Commenter	Comment	Agency response
	<p>and process water.” Stormwater runoff from production areas and land application sites is also a significant pathway for pollution from these facilities. Pollution from animal feeding operations leads to toxic algae blooms that kill fish, degrades recreational waterways, and contaminates drinking water. Animal waste also emits ammonia, which can deposit on soil or directly in water and contribute to algae blooms and fish kills. In addition, ammonia emissions are harmful to human health. Moreover, researchers recently found that residents living close to hog facilities in North Carolina are at higher risk for kidney disease, anemia, tuberculosis, and other serious diseases. Given their significant environmental and public health threats, Virginia needs a far stronger permitting framework to control pollution from animal feeding operations.</p>	
<p>Southern Environmental Law Center</p>	<p>II. DEQ should exclude animal feeding operations using covered lagoons or digesters from coverage under the general permit. The agricultural and energy industries are touting so-called biogas, or energy from animal waste, as a “renewable” energy resource and one solution to our climate crisis. These claims are dubious at best and false at worst. Operations that intend to generate biogas using digesters as part of their animal waste management practices pose specific and significant risks to groundwater and surface water resources and should not be permitted under the general permit. These facilities are more appropriately permitted under an individual permit. Digesters can fundamentally change animal waste management systems and the characteristics of the waste. Digester waste—the waste left over after the methane and other gases have been siphoned out of the digester—has more ammonium and a higher pH, emits more harmful ammonia, and contains more soluble phosphorus and nitrogen than waste in conventional lagoons. Digesters increase the total production of methane by creating an environment with less oxygen than a conventional lagoon and using management practices that enhance the methanogenic bacterial population in the waste. As more organic matter is destroyed and converted to methane, which is siphoned off, the digester waste is left with very little carbon and high concentrations of ammonium, soluble nitrogen, phosphorus, and other nutrients. The pH of digester waste also increases relative to conventional waste, driving an increase in</p>	<p>Responses to II A through D are below.</p>

Commenter	Comment	Agency response
	<p>ammonia and continued methane emissions during open-air storage. The remaining more-soluble nitrogen and phosphorus in digester waste increases the ability of pollutants to infiltrate soil and contaminate groundwater. As a result, a leak or overflow of digester waste from a lagoon can be even more devastating for the environment and human health than a leak or overflow from a conventional lagoon. For these reasons, operations using digesters should not be permitted under the general permit. If operations using digesters are allowed to obtain coverage under the general permit, DEQ should, at a minimum, incorporate the following requirements to protect water quality and state waters from discharges, and to reduce harm to neighboring communities:</p>	
<p>Southern Environmental Law Center</p>	<p>II A. Require gas-tight storage of digester waste. As discussed above, open-air storage of digester waste is a major source of methane, nitrous oxide, and ammonium emissions. Unless digester waste is stored in closed, gas-tight storage, these systems may worsen local air and water quality. DEQ should therefore prohibit storage of digester waste in open-air lagoons. Many scientists and policymakers have urged a ban on open-air storage of digester waste (digestate). Several countries—particularly in Europe where agricultural anaerobic digesters have been used for several decades—and international environmental agencies have adopted this approach. Since 2019, the European Environmental Agency has “strongly recommended that digestate is held in a covered store.” Even the European Biogas Association—an industry group—acknowledges that “[t]he most suitable way to handle residual biogas is to keep it in a gas-tight covered digestate storage tank that is connected to the gas system.” In addition, gas tight storage of digestate, when combined with secondary biogas capture, is economically preferable to open digestate storage.</p>	<p><i>II A. Require gas-tight storage of digester waste.</i> Section 70 Part I B 10 requires that the waste treatment process shall be approved by the department. Additionally, Part I B 6 requires that new waste storage facilities (including digesters) constructed after November 16, 2014 (the effective date of the addition of this condition) shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Virginia Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture and approved by the department. NRCS has a standard practice for anaerobic digesters.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environmental Law Center</p>	<p>II B. Prohibit the conversion of unlined lagoons to store digester waste. DEQ should prohibit the conversion of unlined lagoons—particularly those using clay soil liners—to store digestate. Digester waste contains more soluble forms of nutrients such as nitrogen and phosphorus, making groundwater contamination more likely. Even new lagoons with synthetic liners pose a risk of groundwater contamination. For this reason, in Europe, most digestate storage tanks are built using concrete.</p>	<p><i>II B. Prohibit the conversion of unlined lagoons to store digester waste.</i> Section 70 Part I B 3 requires that all earthen waste storage facilities include a properly designed and installed liner. This condition also stipulates the thickness and permeability rating of the liner. This permit condition requires that a Virginia licensed engineer or NRCS employee with engineering approval authority shall certify that the siting, design, and construction of the</p>

Commenter	Comment	Agency response
		<p>waste storage facility comply with the requirements of this permit. All waste storage facilities covered under this permit meet the requirements outlined in Section 70 Part I B 3.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environmental Law Center</p>	<p>II C. Prohibit animal mortality, food waste, human waste, and septage as feedstock for digesters. The current draft general permit allows the addition of off-site waste to digesters or other manure treatment technologies. DEQ should prohibit animal mortality, food waste, human waste, and septage as feedstock for digesters under the general permit. Co-digestion of waste presents a complex host of issues related to methane emissions and digester waste management. Failure to properly manage digesters that co-digest animal waste and other feedstock such as carcasses or food waste can have dire consequences. On May 30, 2022, a digester in Wayne County, North Carolina containing hog excrement, hog carcasses, and food waste exploded and released the waste into nearby wetlands. Over 3 million gallons of waste in the form of foam was expelled, and over 40,000 gallons reached the wetlands. The updated standard for anaerobic digesters issued by the National Resources Conservation Service (NRCS) provides that “food waste, wastewater from food processing operations, and other allowable organic substrates may be added as supplemental feedstock to a digester when the digester is designed to treat such wastes.” The specificity with which such digesters would need to be designed and managed should require individual permits. At a minimum, DEQ should require permittees to obtain express permission from DEQ prior to adding off-site waste to digesters.</p>	<p><i>II C. Prohibit animal mortality, food waste, human waste, and septage as feedstock for digesters.</i> The regulation prohibits the management of domestic sewage under this general permit. The regulation also prohibits the management of industrial waste under this general permit, except for wastes that have been approved by the department and are managed in accordance with 9VAC25-192-70. Animal mortality, food waste, human waste, and septage collectively fall within the definitions of “domestic sewage” and “industrial wastes” in the base regulation for this general permit, 9VAC25-32-10. As such, they are prohibited or have to be managed in accordance with 9VAC25-192-70. Additionally, all new waste storage facilities shall meet the design and siting criteria conditions outlined in Section 70 Part I B of the general permit. Specifically, Part I B 6 requires that new waste storage facilities (including digesters) constructed after November 16, 2014 (the effective date of the addition of this condition) shall be constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Virginia Natural Resources Conservation Service (NRCS) of the United States Department of Agriculture and approved by the department. NRCS has a standard practice for anaerobic digesters. Section 70 Part II F of the permit requires the permittee to notify the department of any planned changes to the operation prior to the change which includes the expansion or construction of new waste storage facilities.</p> <p><b>No changes are being proposed to address these comments.</b></p>

Commenter	Comment	Agency response
Southern Environmental Law Center	<p>II D. Require digester influent and effluent sampling. DEQ should require quarterly sampling and analysis of digester influent and effluent using a consistent protocol. There is broad consensus in the scientific literature that the use of digesters and the removal of organic matter from waste fundamentally alter the chemical makeup of digester waste relative to conventional waste lagoons. In particular, the more complete anaerobic digestion achieved by a digester leaves digester waste with less dry matter, increasing the rate of soil infiltration, and more soluble nitrogen, phosphorus, and other elements, making pollutants more likely to run off into surface waters or contaminate groundwater. Specifically, DEQ should ensure that samples are taken using the same tools, at the same time of day, and from the same location in the digester or lagoon, and that samples are stored and transported to the laboratory under controlled conditions. DEQ should expand environmentally protective provisions in the proposed regulation and general permit. The potential environmental impacts of animal feeding operations and associated animal waste management are well-documented. DEQ should ensure that the proposed regulation and draft general permit are as strong as possible to protect human health and the environment.</p>	<p><u>II D. Require digester influent and effluent sampling.</u> 9VAC25-192-10 defines “Animal waste” as “liquid, semi-solid, and solid animal manure and process wastewater, compost, or sludges associated with animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies.” The permit requires waste monitoring at least one every year. This requirement is consistent with subdivision D.5. of DCR’s NMP regulations, 4VAC50-85-140, and the DCR Special Conditions that are required in the NMP. Additionally, sampling protocols and requirements are outlined in the Special Conditions in the NMP. The additional requirements requested in the comment are inconsistent with state law.</p> <p><b>No changes are being proposed to address these comments.</b></p>
Southern Environmental Law Center	<p>III A. Require surface water monitoring. The general permit prohibits point source discharges of wastewater to surface waters of the state, except in certain circumstances. However, the proposed regulation and draft general permit contain no surface water monitoring requirements to ensure compliance with this provision. To the extent that DEQ has the legal authority to do so, it should require surface water quality monitoring at any operation within 500 feet of a state water. Samples should be analyzed for nitrogen, phosphorus, bacteria, dissolved oxygen, total suspended solids, and heavy metals and should be collected immediately upstream and immediately downstream of the operation to assess the operation’s impact—and potential discharge—to surface waters.</p>	<p><u>III. A. Require surface water monitoring.</u> The intent of a general permit regulation is to provide the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity that is protective of the environment while reducing the administrative burdens on DEQ. This general permit covers facilities that do not have a point source discharge to State Waters. As such, there is generally no discernible location to sample surface waters that is not influenced by non-point source pollutants that may or may not have their origins at the permitted facility. The general permit requires the implementation of best management practices that preclude point source discharges. Operations that do not qualify for coverage under the general permit may be issued an individual VPA permit or an individual VPDES Concentrated Animal Feeding</p>

Commenter	Comment	Agency response
		<p>Operation (CAFO) permit if there is evidence of a point source discharge to surface waters. DEQ has a consistently required permittees covered by this VPA general permit to obtain an individual permit when non-compliance, including discharges to surface waters, is determined. Individual permits may require surface water monitoring if a clear compliance point can be discerned.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environmental Law Center</p>	<p>III B. Strengthen groundwater, soil, and waste monitoring requirements. Virginia Code § 62.1-44.17:1(E)(4) provides that DEQ “may include in the permit or nutrient monitoring plan more frequent or additional monitoring of waste, soils or groundwater as required to protect state waters.” DEQ should strengthen groundwater, soil, and waste monitoring requirements for operations permitted under this general permit.</p> <p>1. Require groundwater monitoring wells at all liquid waste storage facilities. Liquid waste storage facilities have the potential to leak and impact groundwater. To adequately protect state waters, DEQ should require that groundwater monitoring wells be constructed at all liquid waste storage facilities at adequately protect state waters, not just “earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof.” At a minimum, DEQ should require that groundwater wells be installed at operations with lagoons and/or sprayfields in the 100-year floodplain or located within 500 feet of drinking water wells, operations that use tile drains or subsurface drains, and operations that use digesters.</p> <p>2. Increase the frequency of groundwater monitoring, require monitoring for more groundwater parameters, and clarify the requirements for groundwater management action plans. In addition to the parameters listed in Table 1 in Parts I and III of the draft general permit, DEQ should expand groundwater monitoring requirements to include testing for all parameters with groundwater standards and criteria, as well as bacteria and heavy metals. This monitoring should occur annually rather than every three years. The proposed draft</p>	<p><u>III B. Strengthen groundwater, soil, and waste monitoring requirements.</u> Section 62.1-44.17:1.E.4. of the Code of Virginia specifies which waste storage facilities and under what conditions that groundwater monitoring will be required by the regulatory program (general permit). <i>E.4. The operation shall be monitored as follows: ... (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement permit that required ground water monitoring shall continue such monitoring.</i></p> <p>Requiring groundwater monitoring wells at all liquid waste storage facilities and spray fields is inconsistent with the requirements established by the Code of Virginia. In cases where it is demonstrated that a facility or a permittee no longer qualifies for coverage under the general permit, an individual VPA permit or an individual VPDES CAFO permit may be issued. When a permittee is required to obtain an individual permit, additional requirements are included in the individual permits based on site specific factors. DEQ has a history of requiring permittees covered by this VPA general permit to obtain an individual permit when non-compliance is determined.</p>

Commenter	Comment	Agency response
	<p>permit also requires permittees to submit a groundwater monitoring action plan if groundwater monitoring shows potential noncompliance with the general permit related to waste storage. This language should make clear that groundwater monitoring showing any potential noncompliance with the State Water Control Law would trigger this requirement; that the action plan should be developed by a certified specialist; and that DEQ must approve the plan, as follows: If groundwater monitoring results for any monitored parameter demonstrate potential noncompliance with this general permit <u>or with any groundwater quality standards or criteria, including antidegradation requirements, under the State Water Control Law</u> related to the waste storage facility, then the permittee shall submit an <b>approvable</b> groundwater monitoring action plan <u>developed by a certified technical specialist</u> that outlines appropriate measures to be taken to address the noncompliance. The groundwater monitoring action plan shall be submitted to the department for approval within 30 days of obtaining the monitoring results.</p> <p>In addition, Table 1 in Parts I and III should be modified to list, or include specific reference to, the groundwater standards and criteria for the parameters that must be monitored under the general permit.</p> <p>3. Increase the frequency of soil monitoring and require monitoring for more soil parameters. DEQ should require monitoring for total Kjeldahl nitrogen, carbon, nitrates, nitrites, and bacteria as part of the soil monitoring requirements in Parts I and III of the draft general permit. This monitoring should occur annually rather than every three years. 4. Increase frequency of waste monitoring and specify sampling location. DEQ should require waste monitoring to occur every six months. The general permit should also specify when the waste is sampled (e.g., in the lagoon or before irrigation).</p>	<p>There are no state or federal certification programs related to developing groundwater monitoring action plans. Additionally, there are no state or federal rules that require a certified technical specialist to develop and certify groundwater monitoring action plans. The amendment requires the permittee to submit an approvable groundwater monitoring action plan.</p> <p>The current soils monitoring requirements are consistent with subdivision A.2.f. of 4VAC50-85-140 of the NMP regulations administered by DCR. The DCR Special Conditions that are required in the NMP are consistent with the NMP regulations. Nitrogen recommendations are developed by identifying the soil productivity group for the crop being grown based on the soil series. Environmentally sensitive sites and the management of the crops and soils are also factors considered when establishing the rate and timing in the NMP. Increasing the frequency of soils monitoring is not consistent with the requirements established by the Code of Virginia.</p> <p>The current waste monitoring requirements and sampling protocols are consistent with subdivision A.2.g. of 4VAC50-85-140 of the NMP regulations administered by DCR. The DCR Special Conditions that are required in the NMP are consistent with the NMP regulations. Included in these Special Conditions is a requirement that separate samples shall be taken from all manure sources to be used for application (i.e. liquid, solid, etc.) and that the sample be representative of the manure (waste) to be applied.</p> <p><b>No changes are being proposed to address these comments.</b></p>
Southern Environmental Law Center	III C. Increase the size of buffers for land-applied animal waste. DEQ should require more substantial buffers and setbacks around wells, waterways, other environmentally sensitive features, and neighboring homes to protect them from land-applied waste. The draft general	<u>III C. Increase the size of buffers for land-applied animal waste.</u> The buffer setbacks outlined in the regulation are protective of human health and the environment. The specific buffer setbacks for the VPA/VPDES permits

Commenter	Comment	Agency response
	<p>permit requires permittees to maintain 200 feet between land-applied waste and occupied dwellings on other properties (unless the occupants waive the buffer requirement); 100 feet between land-applied waste and water-supply wells or springs; 35 to 100 feet between land-applied waste and surface waters; and 25 feet between land-applied waste and rock outcroppings, except for limestone outcroppings which require 50 feet of buffer. Additionally, waste may not be applied in a way that would result in discharge into sinkholes. Other states provide greater setbacks and DEQ should follow suit.</p>	<p>for animal feeding operations are consistent with the DCR Standards and Criteria (revised 2014) for VPA and VPDES permitted operations. Based on the DCR Standards and Criteria (revised 2014), the setbacks established by the VPA General Permit Regulations are already more conservative for some of the sensitive features and include features not typically added in NMPs for unpermitted operations. In addition, the buffer setbacks in this general permit are consistent with the buffers established by the EPA CAFO Rule.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environmental Law Center</p>	<p>III D. Refine the exception for severe-weather-related land application of animal waste. The provisions governing land application of animal waste when a waste storage facility is threatened by emergencies, such as fire or flood, should apply only to lagoons having a minimum of four feet of liquid above the sludge layer, with the measurement taken from the stop pump level, at the pump intake, prior to pumping below the stop pump level. Additionally, the general permit should require that land application of waste cease within twelve hours of the National Weather Service issuing a Hurricane Warning, Tropical Storm Warning, or Flood Watch/Flash Flood Watch for the county in which the permitted operation is located. The intent of this type of restriction is to end all land application of waste approximately 24 hours before the onset of a storm event.</p>	<p><i>III D. Refine the exemption for severe-weather related land application of animal waste.</i> Section 70 Part I B.1. requires that all liquid waste storage facilities are designed and operated to prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP, so long as land application information is documented, and the Department is notified. Both requirements are to be completed in accordance with specific conditions in the permit. This condition provides permittees with clear requirements related to waste storage and land application when the permittee is faced with an emergency. Additionally, DEQ staff conduct on-site inspections to ensure compliance with the permit requirements.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environmental Law Center</p>	<p>III E. Require animal waste sludge surveys. To the extent DEQ has the legal authority to do so, it should require permittees to submit sludge surveys to DEQ for approval. For example, North Carolina’s general permit for swine waste management requires “a survey of sludge accumulation in all lagoons every year.” The survey must “include a sketch showing the depth of sludge in the various locations within</p>	<p><i>III E. Require animal waste sludge surveys.</i> Requiring sludge surveys is not consistent with the requirements established by the Code of Virginia. The typical management and operation of most waste storage facilities is to agitate the waste prior to land application. The agitation of the waste will increase the suspension of solids</p>

Commenter	Comment	Agency response
	<p>each lagoon” and the permittee must submit a sludge removal or management plan if the survey shows the sludge accumulation does not satisfy certain criteria.</p>	<p>to facilitate the removal and build up of solids on the bottom of the storage facility. Additionally, it is an acceptable and expected practice to remove solids on a regular basis to manage the operating levels of the storage facilities. All solids are also stored and land applied in accordance with the permit conditions. In cases where it is demonstrated that a facility or a permittee no longer qualifies for coverage under the general permit, an individual VPA permit or an individual VPDES CAFO permit may be issued. When a permittee is required to obtain an individual permit, additional requirements are included in the individual permits based on site specific factors. DEQ has a history of requiring permittees covered by this VPA general permit to obtain an individual permit when non-compliance is determined.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environmental Law Center</p>	<p>IV. DEQ should make additional revisions to the proposed regulation and general permit to improve transparency and accountability. DEQ is required by statute to establish a 10-year permit term for VPA permits for confined animal feeding operations. This is twice the length of Virginia Pollutant Discharge Elimination System permits issued for animal feeding operations. Given this lengthy permit term, DEQ should adopt the following recommendations to increase the availability of important information that affects community health and the environment, to clarify ambiguous terms in the draft general permit, and to ensure compliance with the permit’s non-discharge mandate. Expanding reporting requirements under the general permit will provide DEQ with better oversight of operation practices and will support its enforcement and compliance efforts.</p>	<p>Responses to IV A through H are below.</p>
<p>Southern Environmental Law Center</p>	<p>IV A. Define “24-hour, 25-year storm.” Under the current and proposed regulation, point source discharges of wastewater to surface waters from animal feeding operations are not permitted except in the case of a storm event greater than the 25-year, 24-hour storm.”<sup>35</sup> The regulation should specifically provide that a “25-year, 24-hour storm” is defined by the National Oceanic and Atmospheric Administration Atlas, as updated and amended. At the very least,</p>	<p><u>IV A. Define “24-hour, 25-year storm”.</u> This definition of twenty-five-year, 24-hour storm event is included in 9VAC25-32, the base regulation and is incorporated by reference into 9VAC25-192. As stated in Chapter 32, “twenty-five-year, 24-hour storm event means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years</p>

Commenter	Comment	Agency response
	<p>DEQ should include a definition for this term that relies on the best available science and allows permittees to determine whether their operations are in compliance with the standard.</p>	<p>as established by the National Weather Service or appropriate regional or state rainfall probability information.”</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environmental Law Center</p>	<p>IV B. Expand information required to be submitted with the registration statement. Since the registration statement serves as the application for the general permit, DEQ must ensure that it—and the public—has the necessary information to evaluate whether the operation should be covered by the general permit. In addition to the items already required to be included in or attached to the registration statement, DEQ should require applicants to include a description of the animal waste management system; disclosure of any drain tiles or subsurface drains on the property; identification of off-site locations where waste will be transferred (if applicable); identification of adjacent state waters and classifications; and identification of any drinking water supply wells or springs, residences, schools, and churches within 1,000 feet of the operation’s property line. The description of the animal waste system should include the number and size of any lagoons, lagoon lining material (if any), and the location and size of sprayfields.</p>	<p><i>IV B. Expand information required to be submitted with the registration statement.</i> Section 62.1-44.17:1.C. of the Code of Virginia specifies what is to be submitted with the registration statement.</p> <p><i>C. For coverage under the General Permit, the owner of the confined animal feeding operation shall file a registration statement with the Department of Environmental Quality providing the name and address of the owner of the operation, the name and address of the operator of the operation (if different than the owner), the mailing address and location of the operation, and a list of the types, maximum number and average weight of the animals that will be maintained at the facility. The owner shall attach to the registration statement:</i></p> <ol style="list-style-type: none"> <li><i>1. A copy of a letter of approval of the nutrient management plan for the operation from the Department of Conservation and Recreation;</i></li> <li><i>2. A copy of the approved nutrient management plan;</i></li> <li><i>3. A notification from the governing body of the locality where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2;</i></li> <li><i>4. A certification that the owner or operator meets all the requirements of the Board for the General Permit; and</i></li> <li><i>5. A certification that the owner has given notice of the registration statement to all owners or residents of property that adjoins the property on which the proposed operation will be located. Such notice shall include (i) the types and maximum number of animals that will be maintained at the facility and (ii) the address and phone number of the appropriate Department of Environmental Quality regional office to which comments relevant to</i></li> </ol>

Commenter	Comment	Agency response
		<p><i>the permit may be submitted. Such certification of notice shall be waived whenever the registration is for the purpose of renewing coverage under a permit for which no expansion is proposed and the Department of Environmental Quality has not issued any special or consent order relating to violations under the existing permit.</i></p> <p>A description of the waste storage system is typically provided in the narrative of the NMP or submitted plans and design specifications provided in cases where operations are being proposed. In cases where an application for a new operation or an operation that is proposing to expand is submitted, department staff perform a site visit and meet with the applicant to evaluate the proposal. In accordance with 9VAC25-192-70 B 12. (also known as Part I B 12 of the current effective general permit), <i>The permittee shall implement a nutrient management plan (NMP) developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia and approved by the Department of Conservation and Recreation and maintain the plan on site. The NMP shall address the form, source, amount, timing, and method of application of nutrients on each field to achieve realistic production goals, while minimizing nitrogen and phosphorus loss to ground and surface waters. The terms of the NMP shall be enforceable through this permit. The NMP shall contain at a minimum the following information:</i></p> <ul style="list-style-type: none"> <li><i>a. Site map indicating the location of the waste storage facilities and the fields where waste will be applied;</i></li> <li><i>b. Site evaluation and assessment of soil types and potential productivities;</i></li> <li><i>c. Nutrient management sampling including soil and waste monitoring;</i></li> <li><i>d. Storage and land area requirements;</i></li> <li><i>e. Calculation of waste application rates; and</i></li> <li><i>f. Waste application schedules.</i></li> </ul>

Commenter	Comment	Agency response
		<p>The certified plan writer must also indicate the presence of environmentally sensitive features such as subsurface drain and tiles, wells, springs, etc. on the maps. Additional requirements requested in the comment are inconsistent with state law.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environmental Law Center</p>	<p>IV C. Expand public notice requirements related to registration statements. Under the proposed regulations, applicants are required to provide notice of the registration statement for coverage under the general permit to “all owners or residents of property that adjoins the property on which the animal feeding operation will be located.” Given the potentially far-ranging impacts of animal feeding operations, this notice requirement should be expanded to include all owners and residents of property within a half-mile radius of the operation. Additionally, the notice should include the name, mailing address, and email address of the operation’s owner or other contact person and information about where complaints about the operation can be filed with DEQ. After the registration notice is filed, DEQ or the applicant should be required to provide notice of the 30-day comment period to these same landowners and residents.</p>	<p><u>IV C. Expand public notice requirements related to registration statements.</u> Section 62.1-44.17:1.C. of the Code of Virginia establishes the requirements of the registration statement to include the contents on the form, the attachments and to whom and in what circumstances the notification must be provided by the owner.</p> <p>Section 62.1-44.17:1.D. of the Code of Virginia establishes how comments will be accepted and the length of the comment period:</p> <p><i>D. Any person may submit written comments on the proposed operation to the Department within 30 days of the date of the filing of the registration statement. If, on the basis of such written comments or his review, the Director determines that the proposed operation will not be capable of complying with the provisions of this section, the Director shall require the owner to obtain an individual permit for the operation. Any such determination by the Director shall be made in writing and received by the owner not more than 45 days after the filing of the registration statement or, if in the Director's sole discretion additional time is necessary to evaluate comments received from the public, not more than 60 days after the filing of the registration statement.</i></p> <p>Additional requirements requested in the comment are inconsistent with state law.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environment</p>	<p>IV D. Require nutrient management plans to be updated and certified annually. We appreciate</p>	<p><u>IV D. Require nutrient management plans to be updated and certified</u></p>

Commenter	Comment	Agency response
al Law Center	that the draft general permit now requires permittees to have—and submit to DEQ—an unexpired and certified nutrient management plan (NMP) and that it continues to make clear that a violation of the NMP constitutes a violation of the permit. However, given the dynamic nature of waste management at these facilities, permittees should be required to update and certify nutrient management plans annually.	<p><b>Agency response</b></p> <p><u>annually</u>. The NMP regulations are under the jurisdiction of DCR. DEQ does not have authority to propose amendments to the NMP regulations.</p> <p><b>No changes are being proposed to address these comments.</b></p>
Southern Environmental Law Center	IV E. Require monitoring results to be submitted to DEQ, maintained by the permittee for the full permit term, and made publicly available. As currently drafted, the general permit requires that permittees maintain monitoring data collected under the general permit on-site for only five years, and it is not clear when permittees must report monitoring results to DEQ. Instead, permittees should be required to report all monitoring data to DEQ and to maintain all monitoring records on-site for the full permit term. Additionally, DEQ should make all monitoring data available to the public through an online platform.	<p><u>IV E. Require monitoring results to be submitted to DEQ, maintained by the permittee for the full permit term, and made publicly available</u>. The duration to maintain records by the general permit is derived from the VPA permit regulation (9VAC25-32-80), the base regulation of this general permit. General permit regulations are developed to be at least as restrictive as the base regulation but typically not more restrictive since the VPA regulation is the basis for the general permit regulation. Additionally, E.4. of section 62.1-44.17:1 further prescribes the requirements related to land application and monitoring records: “Such records shall be available for inspection by the Department of Environmental Quality and shall be maintained for a period of five years after recorded application is made”. The monitoring results are reviewed during inspections or at any time department staff request the data. Any data recorded during an inspection is recorded in the inspection report form. Any data received by the department is filed in the DEQ electronic filing system. All non-confidential records are available to the public through the Freedom of Information Act. Additional requirements requested in the comment are inconsistent with state law.</p> <p><b>No changes are being proposed to address these comments.</b></p>
Southern Environmental Law Center	IV F. Improve closure requirements for waste storage facilities. The general permit should require permittees to close waste storage facilities in compliance with all applicable NRCS standards, including NRCS Practice Standard 360. Permittees should also be required to have the closure certified by NRCS or DEQ.	<p><u>IV F. Improve closure requirements for waste storage facilities</u>. 9VAC25-192-70 B 11 contains closure requirements for the permittee: “When the waste storage facility is no longer needed, the permittee shall close it in a manner that (i) minimizes the need for further</p>

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		<p>maintenance and (ii) controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition products to the groundwater, surface water, or the atmosphere.”</p> <p>DEQ staff complete on-site inspections to ensure compliance with all aspects of the permit. Staff provide information to permittees related to the closure of a waste storage facility prior to the closure to ensure it is completed properly. Additionally, site inspections are completed during phases of the closure of a storage facility.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environmental Law Center</p>	<p>IV G. Require records be maintained by permittees for the duration of the permit term. The general permit should require that all records associated with the permittee’s application for, operation under, and compliance with the general permit be maintained by the permittee for the full duration of the permit term.</p>	<p>See response to IV E. above.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Southern Environmental Law Center</p>	<p>IV H. Improve notification of unauthorized discharges. Permittees are required to notify DEQ in the case of unauthorized discharges. In addition to the information already required to be included in a written report submitted after such a discharge, DEQ should require permittees to include the name of any state waters affected by the unauthorized discharge and the most recent waste monitoring results. Permittees should also be required to issue a public press release within 48 hours of any discharge of 1,000 gallons or more of animal waste to surface waters and/or wetlands. The press release should include all information submitted to DEQ in the written report.</p>	<p><i>IV H. Improve notification of unauthorized discharges.</i> The basis of the language in Section 70 Part II is the VPA base regulation. A change in Part II of the general permit regulation would require a corresponding change in the language in the VPA base regulation, which is not a part of this regulatory action. Additionally, the regulation language (and permit) provides for department staff to request, at any time, records associated with the permit. The additional requirements requested in this comment are outside of the scope of this regulatory process.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers</p>	<p>Thank you for the opportunity to submit public comments on the draft Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management (9 VAC 25-192) (“Draft AFO Permit”). These comments are submitted on behalf of the Environmental Integrity Project (EIP), Potomac Riverkeeper</p>	<p>DEQ acknowledges your concerns about environmental threats posed by animal feeding operations. The Board’s authority to implement a program for animal feeding operations is set out in and limited by the authority granted to it by the legislature in § 62.1-44.17.1 of the Code of Virginia.</p>

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<p>Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>Network, Waterkeepers Chesapeake, the Chesapeake Bay Foundation, and the James River Association.                      Animal waste from Virginia’s animal feeding operations and animal waste management facilities (collectively, “AFOs”), if not managed and stored correctly, poses a significant threat to Virginia’s state waters. This waste is a significant source of nitrates and pathogens that can make groundwater dangerous to drink without treatment, potentially harming the many Virginians who depend upon private, untreated groundwater wells. The waste can also contribute to harmful algae blooms (HABs) and other nutrient-related problems in Virginia’s surface waters. The Draft AFO Permit, while an improvement from the existing permit, is still missing necessary measures to validate the “no discharge” assumption underlying the VPA permitting program as well as basic measures needed to protect these waters and Virginia communities, like more comprehensive groundwater monitoring, public transparency, and liner integrity inspections and tests. These needed revisions are summarized in the chart below, followed by a discussion of some of these revisions. Commenters also support the additional ground and surface water protections detailed in the Southern Environmental Law Center’s letter.</p>	<p>The general permit and amendments to it that are part of this regulatory action are within the Board’s authority.</p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>I. Commenter Information EIP is a nonprofit organization dedicated to protecting public health and our natural resources by holding polluters and government agencies accountable under the law, advocating for tough but fair environmental standards, and empowering communities fighting for clean air and clean water. EIP is headquartered in Washington, DC and has staff who live and recreate in Virginia and the Chesapeake Bay region. Potomac Riverkeeper Network’s mission is to protect the right to clean water for all communities and all those who live in and rely upon the Potomac and Shenandoah watersheds by stopping pollution, making drinking water safe, protecting healthy river habitats, and enhancing use and enjoyment for all. Waterkeepers Chesapeake fights for clean water and a healthy environment by supporting 17 Waterkeepers throughout the Chesapeake and coastal regions as they protect their communities, rivers, and streams from pollution, including the James, Shenandoah, and Potomac Riverkeepers and the Assateague Coastkeeper on the Eastern Shore. The Chesapeake Bay Foundation is a non-profit</p>	<p>Thank you for your comments.</p>

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	<p>organization founded in 1967 and is devoted to the restoration and protection of the Chesapeake Bay. We are the largest independent conservation organization dedicated solely to the fight for effective, science-based solutions to the pollution degrading the Bay and its rivers and streams within the 64,000-square-mile-watershed. The Chesapeake Bay Foundation boasts more than 91,000 members in Virginia and conducts restoration activities through advocacy, education, and litigation. The James River Association is a member-supported nonprofit organization founded in 1976 to serve as a guardian and voice for the James River. Throughout the James River's 10,000-square mile watershed, the James River Association works toward its vision of a fully healthy James River supporting thriving communities. Our thousands of members and supporters have important economic, professional, and personal interests in the health of the James River, and we are pleased to offer a voice for the River and its stakeholders.</p>	
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>III. Additional Groundwater Protections for Earthen Liquid Waste Storage Facilities are Needed (Part I.A and Part III.A, Pollutant Management and Monitoring Requirements) There are at least 78 AFOs in Virginia with earthen lagoons. See Exhibit 1 (Inspection Report Review). Some have synthetic liners, some have compacted soil liners, and others have no additional liner. Because earthen lagoons can be permeable, they are more likely to leak than properly functioning synthetic lined lagoons. In 2018, the D.C. Circuit held that the EPA was not justified in treating coal ash impoundments with clay liners the same as those with synthetic liners because clay lined ponds posed higher risks to human health. <i>Utility Solid Waste Activities Group v. Environmental Protection Agency</i>, 901 F.3d 414, 429, 438 (D.C. Cir. 2018); see also <i>id.</i> at 431 (“Clay-lined surface impoundments have a 9.1 per cent chance of causing groundwater contamination at drinking water wells at a one-mile distance from the impoundment perimeter.”). The Draft AFO Permit recognizes the weakness of earthen lagoons in part by requiring groundwater monitoring wells at some earthen lagoons. But more needs to be done to ensure that no earthen lagoons are discharging animal waste to groundwater. More than 22% of Virginians depend upon private groundwater wells for their water supply.</p>	<p>Responses to III 1 through 6 are below.</p>

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	<p>Animal waste contains numerous pollutants and pathogens that can pollute that groundwater and harm those who drink it, including nitrates and pathogens. In addition, animal waste can contaminate groundwater that then flows into surface waters, like the Chesapeake Bay, adding nutrient pollutants to an already-overburdened waterbody.</p> <p>Without groundwater monitoring, there is no way to know whether or not these earthen lagoons are discharging animal waste and contaminating groundwater. This is similar to the monitoring that the Ninth Circuit held was needed for CAFOs in 2021 - “[w]ithout a requirement that CAFOs monitor waste containment structures for underground discharges, there is no way to ensure that production areas comply with the Permit’s zero-discharge requirement.” Food &amp; Water Watch v. U.S. Environmental Protection Agency, 20 F.4th 506, 517–18 (9th Cir. 2021). If the BMPs required by the Permit work correctly, the downgradient wells should not show any pollutant levels above the levels in the upgradient wells. See, e.g., Draft AFO Permit Part I.A.6 (high levels in well trigger groundwater monitoring action plan). If these downgradient wells show higher pollution levels, however, something has gone wrong and needs to be fixed at the earthen lagoon. Higher levels also mean that any drinking water wells downgradient of the earthen lagoon need to be tested and potentially treated before the water is safe to drink.</p> <p>The Draft AFO Permit’s monitoring well requirements are inadequate to protect Virginia’s groundwater for at least six reasons. First, the Draft AFO Permit does not require any groundwater monitoring wells at earthen liquid storage lagoons constructed before 1998 and those built less than one foot below the seasonal high water table. Only two AFOs are required to monitor groundwater based on recent inspection reports. At least 75 other AFOs have earthen storage lagoons with no monitoring requirements. Given the known weaknesses of earthen lagoons, all earthen lagoons, not just newer ones or those closest to groundwater, should have groundwater monitoring wells.</p> <p>Second, the Permit only requires one downgradient groundwater monitoring well, which is not adequate to monitor groundwater pollution.</p>	

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	<p>Third, the Permit only requires annual monitoring (or even monitoring every three years), which is not frequent enough to detect groundwater contamination.</p> <p>Fourth, monitoring results are not easily available to the public.</p> <p>Fifth, the Draft AFO Permit’s monitoring requirements do not include any the pathogens and indicator bacteria found in animal waste that pose a danger to drinking water supplies.</p> <p>Sixth, the Draft AFO Permit needs pollution limits, not just monitoring, in order to protect groundwater as a drinking water supply from critical human health pollutants like nitrates and pathogens.</p> <p>In order to protect groundwater and the Virginians who depend upon it, as well as the Chesapeake Bay and other Virginian surface waters, the Permit’s monitoring well conditions should be improved as follows:</p>	
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>III 1. Require Groundwater Monitoring Wells for All Earthen Lagoons</p> <p>The Draft AFO Permit exempts from monitoring pre-1998 liquid waste storage facilities and those located less than one foot below the seasonal high water table, stating that “[a]t earthen liquid waste storage facilities constructed after December 1, 1998, to an elevation below the seasonal high water table or within one foot thereof, groundwater monitoring wells shall be installed. A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires groundwater monitoring.” Draft AFO Permit Part I.A.2; Part III.A.2 (emphases added).</p> <p>In its response to the comments received during the public comment period following the publication of the NOIRA, VDEQ defended exempting the pre-1998 older liquid waste storage facilities from monitoring wells as follows:</p> <p>The date, December 1, 1998, found in permit special conditions related to waste storage is the effective date of amendments that were made to the regulation based on changes to the Code of VA § 62.1-44.17:1. The date was inserted into the regulation to make it clear when certain requirements became effective. The liner thickness and permeability specification requirements were in the regulation prior to the amendments that became effective on December 1, 1998, and therefore were in effect for waste storage structures constructed prior to December 1, 1998.</p>	<p><u>III 1. Require Groundwater Monitoring Wells for All Earthen Lagoons.</u> While the Acts of Assembly was enacted in 1994, further changes to the waste storage requirements and other requirements were made in 1998. Senate Bill 661, enacted by the 1998 General Assembly amended Section 62.1-44.17:1 (Chapters 805 and 863, 1998 Acts). The State Water Control Board, through a rulemaking modified the general permit regulation strictly for the purpose of making it conform to the requirements of state law. The rulemaking became effective December 1, 1998. The amendments to the regulation were made without agency discretion under §9-6.14:4.1 C 4 (a) of the Administrative Process Act. The General Assembly changed the law that mandates the general permit by adding requirements. Two specific additions were related to waste storage: (1) waste storage lagoons may no longer be located within a 100-year floodplain; and (2) the siting, design and construction of the waste storage lagoon must be certified as meeting the permit requirements. The date was added to the regulation to ensure the permitted community understood the requirements regarding waste storage and makes it clear that waste storage constructed prior to the effective date of the Acts of Assembly</p>

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	<p>Town Hall Agency Background Document for 9VAC25-192 at 6 (Aug. 2023).</p> <p>This is not an adequate reason for exempting pre-1998 earthen lagoons from monitoring wells. While VDEQ is correct that the Code of Virginia, § 62.1-44.17:1, does not specifically require groundwater monitoring at pre-1998 lagoons, the law does not bar VDEQ from requiring groundwater monitoring wells at earthen lagoons constructed before 1998. Instead, the law provides VDEQ with the authority to include additional monitoring when required to protect state waters: “[t]he Department of Environmental Quality and the Department of Conservation and Recreation may include in the permit or nutrient management plan more frequent or additional monitoring of waste, soils or groundwater as required to protect state waters.” Va. St. § 62.1-44.17:1(E)(4) (emphasis added).</p> <p>Groundwater monitoring is needed to protect state waters at all earthen liquid waste storage facilities, including the pre-1998 facilities and those located less than one foot below the seasonal high water table. See Va. St. § 62.1-44.17:1(E)(4). As described above, earthen lagoons can be permeable and leak. Moreover, current liner and construction rules were only enacted in 1994, meaning facilities constructed before 1994 are not required to have “properly designed and installed liner[s],” like “a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour,” or required to be “constructed, operated, and maintained in accordance with the applicable practice standard adopted by the Natural Resources Conservation Service of the U.S. Department of Agriculture and approved by the department.” Current AFO Permit, Part I.B.3, 6; Va. St. § 62.1-44.17:1(E). Without even these basic construction requirements, these old waste lagoons are much more likely to be leaking animal waste to groundwater.</p> <p>Finally, without requiring monitoring DEQ is unable to ascertain whether these earthen lagoons even remain eligible for coverage under the Draft AFO permit, or whether, because they include a discharge to state waters, a Virginia Pollutant Discharge Elimination System (“VPDES”) permit is required. Without any monitoring for the waste lagoons most likely to be discharging to state water, DEQ cannot maintain the legal mirage that these are “no</p>	<p>are not required to meet the new requirements. The DEQ has authority to require that a new waste storage facility constructed after December 1, 1998, meet the new construction conditions but not a waste storage facility constructed prior to the new conditions becoming effective. DEQ cannot make restrictions retroactive. Prior to the promulgation of this general permit, the activities of the animal feeding operations were covered by an individual VPA permit. The individual permits contained the conditions related to waste storage facilities including requirements to install a liner and permeability requirements. Additionally, the NRCS requirements during that time also required compacted clay liners and related specifications for waste storage facilities. At the very least, the older waste storage facilities must have compacted clay liners in order to hold the materials being stored. The date was added to the regulation not to limit ground water monitoring but to note the changes to the requirements. Section 70 Part I A.3. of the permit requires that “All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table.” Adding the date to mark the effective date of the changes does not exempt but make it clear when the changes occurred.</p> <p>Section 62.1-44.17:1.E.4. of the Code of Virginia specifies which waste storage facilities and under what conditions that groundwater monitoring will be required by the regulatory program (general permit):</p> <p><i>E.4. The operation shall be monitored as follows: ... (iii) ground water shall be monitored at new earthen waste storage facilities constructed to an elevation below the seasonal high water table or within one foot thereof; and (iv) all facilities previously covered by a Virginia Pollution Abatement</i></p>

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	<p>discharge” facilities. See, e.g., Food &amp; Water Watch, 20 F.4th at 517 (without monitoring for underground discharges, “there is no way to ensure that production areas comply with the Permit’s zero-discharge requirement”).</p>	<p><i>permit that required ground water monitoring shall continue such monitoring.</i></p> <p>Requiring groundwater monitoring wells at all liquid waste storage facilities and spray fields is not consistent with the requirements established by the Code of Virginia. In cases where it is demonstrated that a facility or a permittee no longer qualifies for coverage under the general permit, an individual VPA permit or an individual VPDES CAFO permit may be issued. When a permittee is required to obtain an individual permit, additional requirements are included in the individual permits based on site specific factors. DEQ has a history of requiring permittees covered by this VPA general permit to obtain an individual permit when non-compliance is determined.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>III 2. Require at Least Two Downgradient Groundwater Monitoring Wells The Draft Permit requires only one downgradient monitoring well at every earthen lagoon, which is rarely enough to monitor groundwater on a large, multiacre property. For instance, Resource Conservation and Recovery Act, Subtitle C, requires the installation of at least three downgradient monitoring wells. 40 C.F.R. § 265.91. In order to ensure that the earthen lagoon is not leaking and contaminating groundwater, the Permit should require at least two, if not more, downgradient wells.</p>	<p><u>III 2. Require at Least Two Downgradient Groundwater Monitoring Wells.</u> Section 70 Part I A.2. states: “A minimum of one up gradient and one down gradient well shall be installed at each earthen waste storage facility that requires groundwater monitoring. Existing wells may be utilized to meet this requirement if properly located and constructed.” This language provides the minimum criteria. During the waste storage approval process, staff can require more monitoring wells to be installed.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac</p>	<p>III 3. Increase the Frequency of Monitoring to Monthly Every three year, or annual monitoring is insufficient to alert the facility, the state, or the neighbors as to groundwater contamination. With only this infrequent monitoring, if a well has high levels of a pollutant, a neighbor may be drinking contaminated groundwater from a private well for a whole year or more without knowing there is any risk, and the facility could be putting a groundwater monitoring action plan</p>	<p><u>III 3. Increase the Frequency of Monitoring to Monthly.</u> The reissuance of the general permit regulation maintains the frequency of groundwater monitoring required in general permit regulations that were adopted and effective for 10-year terms beginning in 2004 and 2014. When non-compliance or circumstances are discovered to necessitate additional monitoring, an individual permit may be required in</p>

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River Keeper Network, James River Association	into place more than year after the pollution was present in the well. The frequency should be increased to monthly, or, at a minimum, every six months.	order to effect more restrictive requirements. Section 70 Part II.T. allows DEQ to require a permittee to obtain an individual VPA permit.  <b>No changes are being proposed to address these comments.</b>
Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association	III 4. Make the Sampling Results Publicly Available by Requiring Electronic Reporting Because groundwater contaminated by animal waste can migrate to other properties and to drinking water wells, it is imperative that the AFO's neighbors and the public at large can view the AFO's monitoring data on a timely basis. The best and easiest way to do that is by requiring AFOs to electronically report their monitoring data on e-DMRs, like other water quality permittees.	<u>III 4. Make the Sampling Results Publicly Available by Requiring Electronic Reporting.</u> DEQ documents monitoring records during inspections. DEQ staff scan all submitted files for upload into the DEQ electronic filing system. Many of the permittees would not have the capability to submit any documents in an electronic format. All monitoring records that DEQ has in the electronic file system associated with the permits are available to the public through the Freedom of Information Act.  <b>No changes are being proposed to address these comments.</b>
Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association	III 5. Add Monitoring for E. Coli, Cryptosporidium, and Giardia lamblia There are over 150 pathogens in animal manure that could impact human health, including E. coli, Bacillus anthracis, Leptospira Pomona, Listeria monocytogenes, Salmonella, Clostridium tetani, Histoplasma capsulatum, Microsporium, Trichophyton, Giardia lamblia, and Cryptosporidium. If that animal waste leaks into groundwater, these pathogens make groundwater dangerous for humans to drink, causing, among other impacts, severe diarrhea that can kill vulnerable populations like infants, young children, pregnant women, the elderly, and those who are immunosuppressed, HIV positive, or have had chemotherapy. These impacts can be widespread. For instance, in 1993, Cryptosporidium caused a waterborne illness outbreak in which over 400,000 persons were infected in Milwaukee, Wisconsin. A National Association of Local Boards of Health report, Understanding Concentrated Animal Feeding Operations and Their Impact on Communities, summarizes the threat from animal feeding-related pathogens to drinking water supplies as follows: When groundwater is contaminated by pathogenic organisms, a serious threat to drinking water can occur. Pathogens survive longer in groundwater than surface water due to lower temperatures and protection from the sun.	<u>III 5. Add Monitoring for E. Coli, Cryptosporidium, and Giardia lamblia.</u> As there are no groundwater standards for the suggested bacteria parameters, there is no scientific basis to establish compliance guidelines for the suggested parameters or set limits on these parameters.  <b>No changes are being proposed to address these comments.</b>

Commenter	Comment	Agency response
	<p>Even if the contamination appears to be a single episode, viruses could become attached to sediment near groundwater and continue to leach slowly into groundwater. One pollution event by a CAFO could become a lingering source of viral contamination for groundwater (EPA, 2005).</p> <p>To ensure that neighboring drinking water wells are not contaminated with pathogens, the groundwater monitoring wells at earthen lagoons should be regularly monitored for the most easily tested pathogens commonly found in animal waste – E. Coli, which acts as a surrogate for many of these pathogens, the protozoan Cryptosporidium, and the parasite Giardia.</p>	
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>III 6. Add Limits for Nitrates, E. Coli, Cryptosporidium, and Giardia lamblia Limits, not just monitoring are needed for pollutants that pose acute risks to human health and drinking water supplies, like nitrates and pathogens.</p> <p>A. Limits for Ammonia Nitrogen and Nitrate Nitrogen</p> <p>Ammonia nitrogen, which is likely to become nitrate, and nitrate nitrogen pose a significant threat to groundwater. For public water systems, the U.S. Environmental Protection Agency (EPA) has set a primary drinking water limit (MCL) of 10 milligrams per liter (mg/L) for nitrogen when reported in the nitrate-nitrogen form (NO3-N), primarily because of the danger to babies from “blue baby syndrome,” where babies cannot adequately transport oxygen in their blood. High levels of nitrates in drinking water may also be linked to birth defects, miscarriages, increased heart rate, nausea, headaches, and abdominal cramps for adults. In addition, when groundwater high in nitrates migrates to surface water, those nitrates become a source of nutrients that can cause harmful algae blooms (HABs), which make waters dangerous for recreation and drinking water.</p> <p>Virginia sets the following groundwater standards for ammonia nitrogen and nitrate nitrogen in 9 VAC 25-280-50:</p> <p>Animal waste is a significant source of total nitrogen, including ammonia nitrogen and nitrate nitrogen.</p> <p>To protect groundwater, the Permit should include Virginia’s groundwater standards for ammonia nitrogen and nitrate nitrogen as limits in the downgradient wells. At a minimum, the</p>	<p><u>III 6.A. Limits for Ammonia Nitrogen and Nitrate Nitrogen.</u> The general permit requires monitoring for ammonia nitrogen and nitrate nitrogen where groundwater monitoring is required. If groundwater monitoring results demonstrate potential noncompliance, then the permittee shall submit an approvable groundwater monitoring action plan that outlines appropriate measures to be taken to address the noncompliance. Because nitrate and ammonia in groundwater may be present in agricultural settings unrelated to the permitted AFO, it is not appropriate to establish overarching limits in the general permit. The appropriate limit to demonstrate compliance may be established through comparison with background well data and detailed in the action plan.</p> <p><b>No changes are being proposed to address these comments.</b></p>

Commenter	Comment	Agency response
	<p>Permit should include nitrate limits in the downgradient wells to protect drinking water – the 10 mg/L MCL.</p>	
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>III 6. B. Non-Detect Limit for E. Coli, Cryptosporidium, and Giardia Lamblia                      To ensure that neighboring drinking water wells are not contaminated with pathogens and pose a human health threat, the Permit should include non-detect limits in downgradient monitoring wells for E. Coli, Cryptosporidium, and Giardia Lamblia consistent with EPA’s Maximum Contaminant Level Goal (MCLG), the level of a contaminant in drinking water below which there is no known or expected risk to health. The MCLG for all three pathogens is zero.</p>	<p><u>III 6 B. Non-Detect Limits for E. Coli, Cryptosporidium, and Giardia lamblia.</u>                      As there are no groundwater standards for the suggested bacteria parameters, there is no scientific basis to establish compliance guidelines for the suggested parameters or set limits on these parameters.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>IV. Liner Integrity Requirements (Part I.B and Part III.A.2, Site design, Storage, and Operations Requirements)                      1. Require Liner Integrity Tests and Monthly Inspections                      Ensuring the integrity of liners for liquid waste storage facilities is key to protecting groundwater and surface water from animal waste. If the liner is leaking or broken and animal waste enters into groundwater, it can contaminate drinking water supplies for years. The National Association of Local Boards of Health note that “[o]ne pollution event by a CAFO could become a lingering source of viral contamination for groundwater.” Animal waste that leaks into groundwater can also contaminate nearby surface waters. Virginia law reflects the importance of well-engineered and well-maintained liners, requiring that an AFO “shall have a liquid manure collection and storage facility designed and operated to (i) prevent any discharge to state waters, except a discharge resulting from a storm event exceeding a 25-year, 24-hour storm.” Va. St. § 62.1-44.17:1(E)(1) (emphasis added).                      To ensure that liners are operated to prevent any discharge to state waters except a 25-year storm, the Permit’s liner requirements should be revised to include the following:                      • Monthly inspections                      • Permeability testing to ensure that the facility meets a permeability rating of 0.0014 gal/hr                      These low-cost, common-sense BMPs will help ensure that lined liquid manure collection and storage facilities are operated to prevent any</p>	<p><u>IV 1. Require Liner Integrity Tests and Monthly Inspections.</u> Section 70 Part I B 3 requires that all earthen waste storage facilities include a properly designed and installed liner. This condition also stipulates the thickness and permeability rating of the liner. This permit condition requires that a Virginia licensed engineer or NRCS employee with engineering approval authority shall certify that the siting, design, and construction of the waste storage facility comply with the requirements of this permit. All waste storage facilities covered under this permit meet the requirements outlined in Section 70 Part I B 3. Liner testing is required during construction of new earthen storage facilities in order for the engineer to certify the structure. Testing is also completed while the structure is in use if a repair is made to the liner. Unless the integrity of the liner is compromised, further testing is not necessary. Section 70 Part I B.1. requires that <i>Any liquid manure collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients</i></p>

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	<p>discharge to state waters, as required by the Code of Virginia, § 62.1-44.17:1(E)(1), and ensure the protection of Virginia state waters.</p>	<p><i>should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.</i> Compliance with this condition can be reached in many ways including inspections. When non-compliance is determined, DEQ can require a permittee to obtain an individual permit. Individual permits include additional requirements such as inspections of the waste storage and handling systems.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>IV 2. Expand Basic Liner Requirements to All Earthen Lagoons Built Before 1994                      The Permit should be revised to expand the Draft AFO Permit's current requirement that earthen waste storage facilities include either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour to lagoons built after 1994, rather than 1998. As VDEQ itself noted in its response to comments, these liner requirements were in statute before 1998. Town Hall Agency Background Document for 9 VAC 25-192 at 6 (Aug. 2023); VA ST § 62.1-44.17:1(E)(4). These requirements appear to have put in place in 1994 via legislation that did not include an enactment clause or delayed effective date or any other mechanism that would warrant delaying their effectiveness of this requirement for four years. See Exhibit 2, 1994 Virginia Laws Ch. 698, § 62.1-44.17:1(D)(5). The Permit should be revised to be consistent with Virginia law.</p>	<p><u>IV 2. Expand Basic Liner Requirements to All Earthen Lagoons Built Before 1994.</u> While the Acts of Assembly was enacted in 1994, further changes to the waste storage requirements and other requirements were made in 1998. Senate Bill 661, enacted by the 1998 General Assembly amended Section 62.1-44.17:1 (Chapters 805 and 863, 1998 Acts). The State Water Control Board through a rulemaking modified the general permit regulation strictly for the purpose of making it conform to the requirements of state law. The rulemaking became effective December 1, 1998. The amendments to the regulation were made without agency discretion under §9-6.14:4.1 C 4 (a) of the Administrative Process Act. The General Assembly changed the law that mandates the general permit by adding requirements. Two specific additions were related to waste storage: (1) waste storage lagoons may no longer be located within a 100-year floodplain; and (2) the siting, design and construction of the waste storage lagoon must be certified as meeting the permit requirements. The date was added to the regulation to ensure the permitted community understood the requirements regarding waste storage and makes it clear that waste storage constructed prior to the effective date of the Acts of Assembly are not required to meet the new requirements. The DEQ has authority to require that a new waste storage</p>

Commenter	Comment	Agency response
		<p>facility constructed after December 1, 1998, meet the new construction conditions but not a waste storage facility constructed prior to the new conditions becoming effective. DEQ cannot make restrictions retroactive. Prior to the promulgation of this general permit, the activities of the animal feeding operations were covered by an individual VPA permit. The individual permits contain the conditions related to waste storage facilities including requirements to install a liner and permeability requirements. Additionally, the NRCS requirements during that time also required compacted clay liners and related specifications for waste storage facilities. At the very least, the older waste storage facilities must have compacted clay liners in order to hold the materials being stored. The date was added to the regulation not to limit ground water monitoring but to note the changes to the requirements. Section 70 Part I A.3. of the permit requires that "All facilities previously covered under a VPA permit that required groundwater monitoring shall continue monitoring consistent with the requirements listed below regardless of where they are located relative to the seasonal high water table." Adding the date to mark the effective date of the changes does not exempt but make it clear when the changes occurred.</p> <p>In cases where it is demonstrated that a facility or a permittee no longer qualifies for coverage under the general permit, an individual VPA permit or an individual VPDES CAFO permit may be issued. When a permittee is required to obtain an individual permit, additional requirements are included in the individual permits based on site specific factors. DEQ has a history of requiring permittees covered by this VPA general permit to obtain an individual permit when non-compliance is determined.</p>

Commenter	Comment	Agency response
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>V. Environmental Justice (Part I.T, When an Individual VPA Permit May be Required) Many of these AFOs are located in vulnerable, already-polluted communities. These communities and groundwater are only protected by the Permit's pollution controls if permitted facilities comply with the Permit's terms. "It is the policy of the Commonwealth to promote environmental justice and ensure that it is carried out throughout the Commonwealth, with a focus on environmental justice communities and fenceline communities." Furthering environmental justice and enhancing public participation in the permitting process is also a part of VDEQ's mission. VDEQ can and should ramp up inspections and enforcement. VDEQ should also add protections against repeat violators into the Permit for areas at the 80th or higher national percentile for one or more of EPA's environmental justice indices. We request new language that coverage under the Permit is not available to facilities who: 1) have violated the Permit for more than a year; and 2) are located in census tracts at the 80th or higher national percentile for one or more of EPA's environmental justice indices. Given these facilities' previous noncompliance, the AFOs in the most vulnerable areas would instead be required to apply for and obtain permits that would include more tailored water quality protections, public notice and comment requirements, and better community protection.</p>	<p><b>No changes are being proposed to address these comments.</b></p> <p><i>V. Environmental Justice.</i> Section 62.1-44.17:1.B. of the Code of Virginia requires that an animal feeding operation that meets the requirements of the Section be permitted under the general permit. <i>B. A confined animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system, upon fulfillment of the requirements of this section, shall be permitted by a General Virginia Pollution Abatement permit (hereafter referred to as the "General Permit"), adopted by the Board.</i></p> <p>Section 62.1-44.17:1.H. of the Code of Virginia further specifies the circumstances under which the director may require the owner to obtain an individual permit. <i>H. The Director of the Department of Environmental Quality may require the owner of a confined animal feeding operation to obtain an individual permit for an operation subject to this section upon determining that the operation is in violation of the provisions of this section or if coverage under an individual permit is required to comply with federal law. New or reissued individual permits shall contain criteria for the design and operation of confined animal feeding operations including, but not limited to, those described in subsection E.</i></p> <p>Additionally, the condition found in <u>Part II T. When an individual VPA permit may be required.</u> further prescribes when an individual permit may be required. The general permit is derived from the VPA permit regulation (9VAC25-32-80), the base regulation of this general permit. General permit regulations are developed to be at least as restrictive as the base regulation but typically not more restrictive since the VPA regulation is the basis for the general permit regulation. The proposed change is outside of the scope of this regulatory process.</p>

Commenter	Comment	Agency response
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>VI. Corrective Action (Part I.A.6; Part III. A.6)                      Commenters support the concept in the Draft AFO Permit of corrective action when submitted monitoring data demonstrates noncompliance with the permit. However, the proposed language in the Draft AFO Permit is so vague as to be ineffectual. The Draft AFO Permit language for corrective action should be revised to set out additional steps (monitoring and/or operational changes) that must be made within a specific timeframe after noncompliance has been reported. Where such steps are not taken, or where monitoring data continues to show an actual discharge to state waters, the Draft AFO Permit should be revised to require the permittee to seek VPDES coverage as the facility is no longer eligible for VPA coverage given the reported discharge.</p>	<p><b>No changes are being proposed to address these comments.</b></p> <p><i>VI. Corrective Action (Part I.A.6; Part III. A.6).</i> The current language in the regulation provides for DEQ to require a permittee to obtain an individual VPA permit. Additionally, the State Water Control Law provides the DEQ with the ability to require a permittee to obtain a different permit to manage the operation.</p> <p><b>No changes are being proposed to address these comments.</b></p>
<p>Environmental Integrity Project for Chesapeake Bay Foundation, Waterkeepers Chesapeake, Shenandoah Riverkeeper, Potomac River Keeper Network, James River Association</p>	<p>VII. Land Application Bypass and Nutrient Management Plans (Part I.C.2; Part III.C.2) As addressed in our summary changes chart in Section II above, concerning loopholes were added to the Draft AFO Permit in 9 VAC 25-192-70, Part I.C.5 and 9 VAC 25-192-90, Part III.C.4 that would allow land appliers to bypass the NMP application limitations in instances where the land applier, in his or her discretion, determined that the storage facility may be “threatened by emergencies” such as “fire or flood” or where such conditions are “imminent.” None of these terms is defined in the Draft AFO Permit and without clearer limitations this language could be abused. We suggest placing limitations on the use of this bypass and treating it as an actual bypass and clarifying what the key terms such as “flood” mean. Commenters support the Draft Permit’s new requirement that “All revised and Department of Conservation and Recreation approved NMPs shall be submitted to the department prior to the expiration of the previous NMP.” Part I.C.2; Part III.C.2. Ensuring that NMPs are unexpired and thereby reflect prior nutrient application and uptake will help prevent land appliers from overapplying animal waste. Thank you for your consideration of these comments!</p>	<p><i>VII. Land Application Bypass and Nutrient Management Plans (Part I.C.2; Part III.C.2).</i> Section 70 Part I B.1. requires that all liquid waste storage facilities are designed and operated to prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP, so long as land application information is documented, and the Department is notified. Both requirements are to be completed in accordance with specific conditions in the permit. This condition provides permittees with clear requirements related to waste storage and land application when the permittee is faced with an emergency. Additionally, DEQ staff complete on-site inspections to ensure compliance with the permit requirements.</p> <p><b>No changes are being proposed to address these comments.</b></p>

**Details of Changes Made Since the Previous Stage**

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	New requirement from previous stage	Updated new requirement since previous stage	Change, intent, rationale, and likely impact of updated requirements
<p>9VAC25-192-50 (Authorization to manage pollutants) Subsection C</p>	<p>N/A</p>	<p>The requirement allows for the continuation of the general permit coverage.</p>	<p>C. Continuation of <u>general permit coverage.</u>                       1. <u>In any case where the board, through no fault of the owner or permittee, does not issue the next consecutive general permit with an effective date on or before the expiration date of the expiring general permit, [ the following applies.</u>  <del>Any any ]</del> owner that was authorized to manage pollutants under <del>the</del> <u>this</u> general permit <del>issued in 2004</del> and that submits a complete registration statement <del>on or before November 15, 2014,</del> <u>is authorized to continue to manage pollutants under the terms of the 2004 general permit in accordance with 9VAC25-192-60 on or before the expiration date of the expiring general permit coverage, is authorized to continue to manage pollutants under the terms of the previously issued general permit. The conditions of the</u></p>	<p>Removed unnecessary language “the following applies”. Amended language based on the authority of the State Water Control Board (deleted “board” - replaced with “department” where appropriate) in accordance with Senate Bill 657 as enacted by the 2022 General Assembly.</p>

			<p><u>expiring general permit and any requirements of coverage granted under it shall continue in force until the effective date of the next consecutive general permit and until such time as the [ <del>board</del> department ] either:</u></p> <p>a. Issues coverage to the <u>owner or permittee under this the next consecutive general permit</u>; or</p> <p>b. Notifies the owner <u>or permittee that coverage under this the next consecutive general permit is denied.</u></p>	
9VAC25-192-70 (Contents of the general permit) Part I C 2	N/A	The permittee is required to provide a copy of the current DCR approved NMP to the department.	<p>[ <del>All</del> <u>Within 30 days of the approval by the Department of Conservation and Recreation,</u> <del>all</del> ] <u>revised [ and Department of Conservation and Recreation approved ] NMPs shall be submitted to the department [ prior to the expiration of the previous NMP ]</u>.</p>	Amended the language to require the submittal 30 days after the NMP is approved to make sure the timeframe to utilize the NMPs are not artificially shortened and address any issues with timing related to the development or approval of the NMP that are beyond the control of the permittee. The revised condition reads: "Within 30 days of the approval by the DCR, all revised NMPs shall be submitted to the department." This change was in response to public comment.
9VAC25-192-70 (Contents of the general permit) Part III C 2	N/A	The permittee is required to provide a copy of the current DCR approved NMP to the department.	<p>[ <del>All</del> <u>Within 30 days of the approval by the Department of Conservation and Recreation,</u> <del>all</del> ] <u>revised [ and Department of Conservation and Recreation approved ] NMPs shall be submitted to</u></p>	Amended the language to require the submittal 30 days after the NMP is approved to make sure the timeframe to utilize the NMPs are not artificially shortened and address any issues with timing related to the development or approval of the NMP

			<p><u>the department [ prior to the expiration of the previous NMP ]</u>.</p>	<p>that are beyond the control of the permittee. The revised condition reads: "Within 30 days of the approval by the DCR, all revised NMPs shall be submitted to the department." This change was in response to public comment.</p>
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**Details of All Changes Proposed in this Regulatory Action**

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-192-10 (Definitions)	N/A	Introduction to definition section that explains when definitions are pertinent to the regulation.	Amended the introductory language to read: "The following words and terms when used in this regulation shall have the meanings defined in the State Water Control Law and the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise, except that for the purposes of this chapter:" Removed citation for State Water Control Law (since the definition along with the citation are being added to the definition Section); and added the name "Virginia Pollution Abatement (VPA)" to the permit reg regulation. Amended the introduction language for clarification. Made minor changes based on the Style Manual developed by the Registrar's Office.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in section 9VAC25-192-10.	Amended "Agricultural stormwater discharge" to add the word "land" to clarify the definition. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in section 9VAC25-192-10.	Amended "Animal feeding operation" for consistency with the definition in the Code of Virginia § 62.1-44.17:1.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			Permits for confined animal feeding operations.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in section 9VAC25-192-10.	Amended “Confined animal feeding operation” for consistency with the other definitions.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in section 9VAC25-192-10.	Amended “Director” for consistency with other regulations.
9VAC25-192-10 (Definitions)	N/A	N/A	Added a definition for “General permit” to clarify the meaning when the term is used throughout the regulation. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	N/A	Added a definition for “Land application” to clarify the meaning when the term is used throughout the regulation. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in the conditions located throughout the regulation.	Added a definition for “Local government ordinance form”. Definition was stated in numerous subdivisions within the regulation; it was removed from conditions and moved to the definition section. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	N/A	Amended definition of Nutrient management plan. Amended “the” to “this” in front of “general permit” for consistency with the rest of the regulation.
9VAC25-192-10 (Definitions)	N/A	N/A	Added a definition for “Permittee” to clarify the meaning when the term is used throughout the regulation. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in the conditions located in the contents of the general permit (9VAC25-192-70 and 90).	Added “Seasonal high water table” definition. Definition was stated in numerous subdivisions within the regulation; it was removed from conditions and moved to the definition section. This addition to the definition section will facilitate a better

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	N/A	Added a definition for “State Water Control Law” to clarify the meaning when the term is used throughout the regulation. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	N/A	Added a definition for “Treatment works” to clarify when the term is used in the definition of an animal feeding operation and throughout the regulation. This addition to the definition section will facilitate a better understanding of the term used throughout the regulation sections.
9VAC25-192-10 (Definitions)	N/A	This definition is currently contained in section 9VAC25-192-10.	Moved the definition for “Vegetated buffer” to get the definition in alphabetical order within the Section.
N/A	9VAC25-192-15 (Applicability of incorporated references based on the dates that they became effective)	N/A	Added this section to make it clear which version of the Code of Federal Regulations is effective. The addition of this section will ensure that those subject to this regulation will know which version of the Code of Federal Regulations is pertinent to the cited condition in the regulation.
9VAC25-192-20 (Purpose; effective date of permit)	N/A	The current language outlines what is governed by this regulation. The current regulation became effective on November 16, 2014, and will expire on November 15, 2024.	<p>Amended Section title: Purpose; effective date of the general permit.</p> <p>Amended subsection A: added the title of the regulation and parentheses around the term “general permit” to allow for the use of “general permit” throughout the regulation to mean the VPA regulation and general permit for animal feeding operations and animal waste management. Made additional amendments to clarify who is subject to this regulation.</p> <p>Added “The owners of” and replaced “operate” with “run”. Made changes to language to clarify who is authorized to manage pollutants.</p> <p>Amended subsection B: to read: “This general permit will become effective on November 16, 2024. This general</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>permit will expire on November 15, 2034.” Amended dates to allow for continuation of coverage under the General Permit and allow for the reissuance of the regulation and thereby extend the ability to provide coverage under the general permit for another 10 years.</p>
<p>9VAC25-192-25 (Duty to comply)</p>	<p>N/A</p>	<p>The current language outlines the duty to comply with the regulation.</p>	<p>Amended subsections A and B:                      A. No person shall operate an animal feeding operation with 300 or more animal units utilizing a liquid manure collection and storage system after July 1, 2000, without having submitted a registration statement as provided in 9VAC25-192-60 or being covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual Virginia Pollution Abatement (VPA) permit.                      B. The owner shall comply with all conditions of the general permit and the requirements of this regulation.</p> <p>Amended subsections A and B to be consistent with the language subsection I of the Code of Virginia § 62.1-44.17:1. Permits for confined animal feeding operations.</p>
<p>9VAC25-192-50 (Authorization to manage pollutants)</p>	<p>N/A</p>	<p>The current language outlines who and under what circumstances is subject to the regulation and what is authorized by the permit. The current section refers to the water quality standards regulation but does not cite the regulation.</p> <p>The current regulation allows for the continuation of the general permit coverage.</p>	<p>Amended subsections A, B and C. Made changes to language in subsection A to make it clear who is authorized to manage pollutants. Spelled out acronyms (VPA and VPDES). Added the citation for the specific water quality standards regulation and amended condition language to make it consistent with other regulations. Made the term industrial wastes consistent with term defined in Chapter 32. Deleted the language describing the Local Government Ordinance Form (moved to definition section). Moved subdivision 5 a of subsection A to make the formatting consistent with the other subdivisions in this section. Made minor changes based on the Style Manual developed by the Registrar’s Office. Added “VPA” to places where individual permit is stated. Removed citation in</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>subdivision A 6 and B 2 d related to the training requirements.                      Subsection C. Added “general” to the tagline. Removed the dates and revised the language for consistency with language in other general permits including the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-30).                      Removed unnecessary language “the following applies”. Amended language based on the authority of the State Water Control Board (deleted “board” - replaced with “department” where appropriate) in accordance with Senate Bill 657 as enacted by the 2022 General Assembly.</p>
<p>9VAC25-192-60.                      (Registration statement)</p>	<p>N/A</p>	<p>The current language outlines the requirements to become covered under the general permit and the information that must be submitted to be considered a complete registration statement (permit application).</p>	<p>Amended language in this section to bring consistency to the terms in the regulation. Replaced “VPA General Permit” with “general permit” (as defined). This language change allows for the use of “general permit” throughout this section to mean the VPA regulation and general permit for animal feeding operations and animal waste management.                      In subsection A, deleted “facility” throughout section and replaced with “animal feeding operation.” Deleted the language describing the Local Government Ordinance Form (moved to definition section).                      In subsection B, deleted “facility” and replaced with “animal waste end-user.” Corrected citation in subsection C.                      Made minor changes based on the Style Manual developed by the Registrar’s Office. Amended language to provide clarity throughout this section.</p>
<p>9VAC25-192-70. (Contents of the general permit)</p>	<p>N/A</p>	<p>The current language contains the requirements of the general permit. The current regulation will expire on November 15, 2024.</p>	<p>Made minor changes based on the Style Manual developed by the Registrar’s Office. Amended language based on the authority of the State Water Control Board (deleted “board” - replaced with “department” where appropriate) in accordance with Senate Bill 657 as enacted by the 2022 General Assembly.</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Amended effective date for General Permit to read “November 16, 2024” and expiration date to read “November 15, 2034.” Amended date for reissuance of General Permit. Amending this date will allow for the reissuance of the regulation and thereby extend the ability to provide coverage under the general permit for another 10 years.</p> <p>Amended the name of Part II in the authorization language.</p>
9VAC25-192-70 (Contents of the general permit) Parts I, II and III	N/A	There is inconsistent language in the current regulation.	<p>Replaced “VPA General Permit” with “general permit” (as defined). This language change allows for the use of “general permit” throughout this section to mean the VPA regulation and general permit for animal feeding operations and animal waste management.</p> <p>Replaced “facility” throughout section and replaced with “animal feeding operation.” Amended language to provide clarity throughout this section. Added the word “individual” to VPA permit to clarify the permit type.</p>
9VAC25-192-70 (Contents of the general permit) Part I	N/A	<p>The current section did not have Part I labeled.</p> <p>The tables are in the regulation but not labeled.</p>	<p>Labeled Part I and the name above subsection A. Added this label to facilitate the reader of the contents of the general permit.</p> <p>Added labels and references to the three tables in subsection A of Part I. Added the labels to facilitate the reader of the contents of the general permit.</p>
9VAC25-192-70 (Contents of the general permit) Part I A 6, 7 and Table 1	N/A	The current regulation requires groundwater monitoring at earthen liquid waste storage facilities constructed to a bottom elevation that is below the seasonal high water table.	<p>*Added two conditions related to groundwater monitoring. One permit condition describes when a permittee is required to submit a groundwater monitoring action plan. This process is already required by the department; adding it to the permit makes it clear to the permittee in what cases that the action plan is expected.</p> <p>The other condition outlines which parameters must be analyzed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program (VELAP) in accordance with 1VAC30-46-20. This requirement is already in place;</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			adding it to the permit conditions makes it clear to the permittee.
9VAC25-192-70 (Contents of the general permit) Part I subsection B	N/A	The overall requirements for storage exist in the current regulation.	Amended subsection tagline to assist with reorganizing the conditions into specific subject matters. New tagline: "Site design, storage, and operation requirements". The conditions have been separated from the animal waste transfer and utilization and other general conditions to facilitate a clearer understanding of the requirements. Adding the tagline helps distinguish the subsections. This addition also makes this regulation consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part I subsection B	N/A	The special conditions exist but are not organized into specific subject areas.	Made the following changes to the subdivisions: B 1 through B 10 were not renumbered Original B 17 is now B 11 Original B 11 is now C 1 Original B 12 is now C 2 Original B 13 is now C 3 Original B 14 is now C 4 New Condition C 5 Original B 15 is now C 6 Original B 16 is now C 7 Original B 18 is now D Conditions are being kept, some were amended, and many were moved to a specific subsection and renumbered. The site conditions have been separated from the animal waste transfer and utilization conditions and the condition related to training to facilitate a clearer understanding of the requirements. These amendments also make this regulation consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part I B 2	N/A	The specifics for determining the 100-year floodplain are not contained in the regulation.	*Added clarification as to which tools are to be used to determine the floodplain when siting animal waste storage facilities. Adding the language ensures that the permittee will know what tools must be used to make this determination. This addition also

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			makes this regulation consistent with the other VPA general permit regulation- VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part I B 8	N/A	A minimum of 2-ft separation distance to the seasonal high water table required.	No change to the requirement; moved definition of “seasonal high water table” in this section because it was added to the definition section of the regulation.
9VAC25-192-70 (Contents of the general permit) Part I B 8	N/A	Storage requirements are in the existing regulation.	*Added language related to the storage of semi-solid and solid waste to clarify what is considered adequate storage.
9VAC25-192-70 (Contents of the general permit) Part I B 11	N/A	Waste storage closure requirements are in the existing regulation.	*Moved closure requirements from B.17 and added a notification to the department prior to the closure of a liquid waste storage facility. This notification is an addition to an existing permit condition related to the closure of a waste storage facility. Adding this notification will facilitate the ability for department staff to provide compliance assistance and proper closure procedures to the permittee.
9VAC25-192-70 (Contents of the general permit) Part I (new) subsection C	N/A	The subsection and tagline do not exist. The overall requirements for animal waste use and transfer exist in the current regulation.	Added a new subsection. New tagline: “Animal waste use and transfer requirements”. The conditions have been separated from the site design, storage, and operations related to waste storage and the condition related to training to facilitate a clearer understanding of the requirements. Adding the tagline helps distinguish the subsections. This addition also makes this regulation consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part I (new) C 2	N/A	The permittee shall implement an NMP.	Amended new condition (C 2) to require the submittal 30 days after the NMP is approved to make sure the timeframe to utilize the NMPs are not artificially shortened and address any issues with timing related to the development or approval of the NMP that are beyond the control of the permittee. The revised condition reads: “Within 30 days of the approval

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			by the DCR, all revised NMPs shall be submitted to the department.” The permittee is currently required to provide a copy of the current DCR approved NMP; adding this requirement makes it clear to the permittee of the expectation.
9VAC25-192-70 (Contents of the general permit) Part I (new) C 3	N/A	Waste shall not be land applied with buffer zones. Buffer zone maintenance requirements are specified.	Amended new condition (C 3) to remove the word “permanent” from the condition. “Permanent” is in the definition of the term “vegetated buffer” found in Section 10. This improves clarity and understanding for the permittees.
9VAC25-192-70 (Contents of the general permit) Part I (new) C 5	N/A	The requirement to report unusual or extraordinary discharges is required by the permit.	*Added a new condition (new C 5) to clarify requirements in cases of waste storage emergencies such as fire or flood. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP, so long as land application information is documented, and the Department is notified. This condition provides permittees with clear requirements related to waste storage and land application when the permittee is faced with an emergency. Added this condition to be consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part I (new) subsection D	N/A	The permittee training requirement is in the existing regulation.	New subsection D. This amendment makes this condition consistent with the rest of the conditions in Section 70.
9VAC25-192-70 (Contents of the general permit) Part II	N/A	Part II of Section 70 contains conditions applicable to VPA permits.	<p>Part II was amended, re-organized and renumbered to be consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).</p> <p>There are no substantive changes to the conditions that are applicable to the general permit.</p> <p>Made the following changes to Part II: A and B were amended</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			<p>Original C is now B 2                      Original D is now A 4 and C 3 &amp; 4                      Original E is now F                      Original F is now H                      Original G is now F 1                      Original H now covered by G                      Original I is now covered by Q                      Original J is now covered by Q and R                      Original K now covered by G                      Original L is now O                      Original M is now covered by N                      Original N is now W                      Original O is now J                      Original P is now M                      Original Q is now V                      Original R is now covered by S                      Original S is amended to cover all permit actions                      Original T was only slightly amended                      Original U was only slightly amended                      Original V is now O                      Original W is now P                      Original X is now E</p> <p>New D, I, K, L, and M are conditions that are in 9VAC25-32 which are applicable to all VPA permits.</p> <p>To provide clarity and convenience for owners of animal feeding operations and animal waste end-users who have a general permit, all of the applicable conditions are compiled in Part II.</p>
9VAC25-192-70 (Contents of the general permit) Part III subsection A	N/A	The tables are in the regulation but not labeled.	Added labels and references to the three tables in subsection A of Part III. Added the labels to facilitate the reader of the contents of the general permit.
9VAC25-192-70 (Contents of the general permit) Part III A 6, 7, and Table 1	N/A	The current regulation requires groundwater monitoring at earthen liquid waste storage facilities constructed to a bottom elevation that is below the seasonal high water table.	<p>*Added two conditions related to groundwater monitoring. One permit condition describes when a permittee is required to submit a groundwater monitoring action plan. This process is already required by the department; adding it to the permit makes it clear to the permittee in what cases that the action plan is expected.</p> <p>The other condition outlines which parameters must be analyzed by a laboratory accredited under the Virginia Environmental Laboratory</p>

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			Accreditation Program (VELAP) in accordance with 1VAC30-46-20. This requirement is already in place; adding it to the permit conditions makes it clear to the permittee.
9VAC25-192-70 (Contents of the general permit) Part III subsection B	N/A	The overall requirements for storage exist in the current regulation.	Amended subsection tagline to assist with reorganizing the conditions into specific subject matters. New tagline: "Site design, storage, and operation requirements". The conditions have been separated from the animal waste transfer and utilization and other general conditions to facilitate a clearer understanding of the requirements. Adding the tagline helps distinguish the subsections. This addition also makes this regulation consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part III subsection B	N/A	The special conditions exist but are not organized into specific subject areas.	Made the following changes to the subdivisions: B 1 through B 10 were not renumbered Original B 17 is now B 11 Original B 11 is now C 1 Original B 12 is now C 2 Original B 13 is now C 3 Original B 14 is now C 4 New Condition C 5 Original B 15 is now C 6 Original B 16 is now C 7 Original B 18 is now D Conditions are being kept, some were amended, and many were moved to a specific subsection and renumbered. The site conditions have been separated from the animal waste transfer and utilization conditions and other special conditions to facilitate a clearer understanding of the requirements. These amendments also make this regulation consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general	N/A	The specifics for determining the 100-year floodplain are not contained in the regulation.	*Added clarification as to which tools are to be used to determine the floodplain when siting animal waste storage facilities. Adding the language

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
permit) Part III B 2			ensures that the permittee will know what tools must be used to make this determination. This addition also makes this regulation consistent with the other VPA general permit regulation- VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part III B 8	N/A	A minimum of 2-ft separation distance to the seasonal high water table required.	No change to the requirement; moved definition of “seasonal high water table” from this section because it was added to the definition section of the regulation.
9VAC25-192-70 (Contents of the general permit) Part III B 8	N/A	Storage requirements are in the existing regulation.	*Added permit language related to the storage of semi-solid and solid waste to clarify what is considered adequate storage.
9VAC25-192-70 (Contents of the general permit) Part III B 11	N/A	Waste storage closure requirements are in the existing regulation.	Moved closure requirements from B.17 and added a notification to the department when the permittee closes a liquid waste storage facility. This notification is an addition to an existing permit condition related to the closure of a waste storage facility. Adding this notification will facilitate the ability for department staff to provide compliance assistance and proper closure procedures to the permittee.
9VAC25-192-70 (Contents of the general permit) Part III subsection B	N/A	Waste storage closure requirements are in the existing regulation.	*Added a notification to the department prior to the closure of a liquid waste storage facility. This notification is an addition to an existing permit condition related to the closure of a waste storage facility. Adding this notification will facilitate the ability for department staff to provide compliance assistance and proper closure procedures to the permittee.
9VAC25-192-70 (Contents of the general permit) Part III (new) subsection C	N/A	The subsection and tagline do not exist. The overall requirements for animal waste use and transfer exist in the current regulation.	Added a new subsection. New tagline: “Animal waste use and transfer requirements”. The conditions have been separated from the site design, storage, and operations related to waste storage and the condition related to training to facilitate a clearer understanding of the requirements. Adding the tagline helps distinguish the subsections. This addition also makes this regulation consistent with

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part III (new) C 2	N/A	The permittee shall implement an NMP.	Amended new condition (C 2) to require the submittal 30 days after the NMP is approved to make sure the timeframe to utilize the NMPs are not artificially shortened and address any issues with timing related to the development or approval of the NMP that are beyond the control of the permittee. The revised condition reads: "Within 30 days of the approval by the DCR, all revised NMPs shall be submitted to the department." The permittee is currently required to provide a copy of the current DCR approved NMP; adding this requirement makes it clear to the permittee of the expectation.
9VAC25-192-70 (Contents of the general permit) Part III (new) C 5	N/A	The requirement to report unusual or extraordinary discharges is required by the permit.	*Added a new condition to clarify requirements in cases of waste storage emergencies such as fire or flood. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP, so long as land application information is documented, and the Department is notified. This condition provides permittees with clear requirements related to waste storage and land application when the permittee is faced with an emergency. Added this condition to be consistent with the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-70 (Contents of the general permit) Part III (new) C 5	N/A	Waste shall not be land applied within buffer zones. Buffer zone maintenance requirements are specified.	Amended new condition (C 3) to remove the word "permanent" from the condition. Permanent is in the definition of the term "vegetated buffer" found in Section 10. This improves clarity and understanding for permittees.
9VAC25-192-70 (Contents of the general permit) Part	N/A	The permittee training requirement is in the existing regulation.	New subsection. This amendment makes this condition consistent with the rest of the conditions in Section 70.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
III (new) subsection D			
9VAC25-192-80 (Tracking and accounting requirements for animal waste end-users)	N/A	The regulation contains the recordkeeping requirements for animal waste end-users.	Amended language in this section to bring consistency to the terms in the regulation. Added the different permit types to subsection A. Made the entity plural in subdivisions A 1 a and A 2 a. Made minor changes based on the Style Manual developed by the Registrar’s Office. Amended language based on the authority of the State Water Control Board (deleted “board”- replaced with “department”, where appropriate) in accordance with Senate Bill 657 enacted by the 2022 General Assembly.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The regulation contains the utilization and storage requirements for animal waste end-users.	Amended Section title to: Storage and land application requirements for transferred animal waste. Added the different permit types to subsections A, B, and C. Amended language in this section to bring consistency to the terms in the regulation.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The regulation currently contains conditions for waste storage.	Changed animal waste to semi-solid and solid waste in subdivision in B 1 to clarify the storage requirements and make it consistent with the requirements in Section 70.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The definition exists in the current regulation.	Removed definition of “seasonal high water table” from this section because it was added to the definition section of the regulation.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The regulation currently contains conditions for waste storage.	*Added language related to the storage of semi-solid and solid waste to clarify what is considered adequate storage.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The specifics for determining the 100-year floodplain are not contained in the regulation.	*Added clarification as to which tools are to be used to determine the floodplain when siting animal waste storage facilities. Adding the language ensures that the regulated end-user will know what tools must be used to make this determination. This addition also makes this regulation consistent with Section 70 of this regulation and the other VPA general permit regulation- VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-192-90 (Utilization and storage requirements)	N/A	The table in Section 90 does not have a label	Added a label and reference to the table in subsection C. Added the label to facilitate the reader of this Section.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The requirements for buffer zones exist in Section 90.	Amended new condition (C 3) to remove the word “permanent” from the condition. “Permanent” is in the definition of the term “vegetated buffer” found in Section 10.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The current language in Section 90 does not provide options during an emergency.	*Added a new condition (new C 4) to clarify requirements in cases of waste storage emergencies, such as fire or flood. The new condition provides criteria for the land application of animal waste outside of the land application schedule found in the NMP, so long as land application information is documented and the Department is notified. This condition provides permittees with clear requirements related to waste storage and land application when the regulated end-user is faced with an emergency. Added this condition to be consistent with Section 70 of this regulation and the other VPA general permit regulation - VPA Regulation and General Permit for Poultry Waste Management (9VAC25-630-50).
9VAC25-192-90 (Utilization and storage requirements)	N/A	The current section refers to the water quality standards regulation but does not cite the regulation. The current section refers to the State Water Control Law and includes the specific citation.	Subsection E: Added the citation for the specific water quality standards regulation and amended condition language for consistency with the rest of this regulation and other regulations. Removed citation for State Water Control Law (since the definition along with the citation are being added to the definition Section) and to make it consistent with the rest of this regulation.
9VAC25-192-90 (Utilization and storage requirements)	N/A	The requirement refers to the Board instead of the department.	Subsection F: Amended language based on the authority of the State Water Control Board (deleted “board”- replaced with “department”, where appropriate) Board Bill consistent with Senate Bill 657 enacted by the General Assembly in 2022.
FORMS	N/A	The current effective forms are consistent with the current regulation.	Revised forms and Animal Waste Fact Sheet for consistency with the changes made to 9VAC25-192-60, 9VAC25-192-80 and 9VAC25-192-90.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			Revising the registration statements and the Animal Waste Fact Sheet will provide forms consistent with the changes made to sections previously mentioned.

**Regulatory Flexibility Analysis**

*Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

Currently, 108 animal feeding operations are covered under this general permit. One alternative to the reissuance of the VPA Regulation and General Permit for Animal Feeding Operations and Animal Waste Management is to issue an individual VPA permit to each animal feeding operation which confines 300 or more animal units utilizing a liquid manure collection and storage system. However, due to the number of animal feeding operations currently required to obtain a VPA permit, it is not practical to issue an individual VPA permit to each animal feeding operation. Operations that do not qualify for coverage under the general permit will be issued an individual VPA permit. This general permit regulation provides the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity.

**Family Impact**

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

It is not anticipated that an amendment to this regulation will have any impacts on the family and family stability.

1 **Project 7432 - Exempt Final for June 25, 2024 State Water Control Board meeting- 2024**  
2 **Reissue and amend, as necessary, the Virginia Pollution Abatement (VPA) Regulation and**  
3 **General Permit for Animal Feeding Operations and Animal Waste Management**

4 **9VAC25-192-10. Definitions.**

5 The following words and terms when used in this chapter shall have the meanings defined in  
6 the State Water Control Law (§ 62.1-44.2 et seq. of the Code of Virginia) and the Virginia Pollution  
7 Abatement (VPA) Permit Regulation (9VAC25-32) unless the context clearly indicates otherwise,  
8 except that for the purposes of this chapter:

9 "300 animal units" means 300,000 pounds of live animal weight, or the following numbers and  
10 types of animals:

11 a. 300 slaughter and feeder cattle;

12 b. 200 mature dairy cattle (whether milked or dry cows);

13 c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);

14 d. 150 horses;

15 e. 3,000 sheep or lambs;

16 f. 16,500 turkeys;

17 g. 30,000 laying hens or broilers.

18 "Agricultural stormwater discharge" means a precipitation-related discharge of manure, litter,  
19 or process wastewater that has been applied on land areas under the control of an animal feeding  
20 operation or under the control of an animal waste end-user in accordance with a nutrient  
21 management plan approved by the Virginia Department of Conservation and Recreation and in  
22 accordance with site specific nutrient management practices that ensure appropriate agricultural  
23 land utilization of the nutrients in the manure, litter, or process wastewater.

24 "Animal feeding operation" means a lot or facility, together with any associated treatment  
25 works, where both of the following conditions are met:

26 1. Animals have been, are, or will be stabled or confined and fed or maintained for a total  
27 of 45 days or more in any 12-month period; and

28 2. Crops, vegetation, forage growth, or post-harvest residues are not sustained in the  
29 normal growing season over any portion of the operation of the lot or facility.

30 Two or more animal feeding operations under common ownership are a single animal feeding  
31 operation for the purposes of determining the number of animals at an operation, if they adjoin  
32 each other, or if they use a common area or system for the disposal of ~~wastes~~ liquid waste.

33 "Animal waste" means liquid, semi-solid, and solid animal manure and process wastewater,  
34 compost, or sludges associated with animal feeding operations including the final treated wastes  
35 generated by a digester or other manure treatment technologies.

36 "Animal waste end-user" or "end-user" means any recipient of transferred animal waste who  
37 stores or who utilizes the waste as fertilizer, fuel, feedstock, livestock feed, or other beneficial use  
38 for an operation under ~~his~~ the recipient's control.

39 "Animal waste fact sheet" means the document that details the requirements regarding  
40 utilization, storage, and management of animal waste by end-users. The fact sheet is approved  
41 by the department.

42 "Beneficial use" means a use that is of benefit as a substitute for natural or commercial  
43 products and does not contribute to adverse effects on health or environment.

44 "Board" means the State Water Control Board. When used outside the context of the  
45 promulgation of regulations, including regulations to establish general permits, "board" means the  
46 Department of Environmental Quality.

47 "Confined animal feeding operation;" ~~for the purposes of this regulation, has~~ means the same  
48 meaning as an "animal feeding operation."

49 "Department" means the Department of Environmental Quality.

50 "Director" means the Director of the Virginia Department of Environmental Quality, or his  
51 designee an authorized representative.

52 "General permit" means this chapter.

53 "Land application" means the distribution of animal waste by spreading or spraying on the  
54 surface of the land, injecting below the surface of the land, or incorporating into the soil with a  
55 uniform application rate for the purpose of fertilizing crops or vegetation or conditioning the soil.  
56 The fields or sites used for the land application of animal waste in accordance with this chapter  
57 are not considered to be treatment works. Deposition of animal waste by an animal is not land  
58 application.

59 "Local government ordinance form" means a notification from the governing body of the  
60 county, city, or town where the animal feeding operation is located that the animal feeding  
61 operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.)  
62 of Title 15.2 of the Code of Virginia.

63 "Nutrient management plan" or "NMP" means a plan developed or approved by the  
64 Department of Conservation and Recreation that requires proper storage, treatment, and  
65 management of animal waste and limits accumulation of excess nutrients in soils and leaching or  
66 discharge of nutrients into state waters; except that for an animal waste end-user who is not  
67 covered under ~~the~~ this general permit, the requirements of 9VAC25-192-90 constitute the NMP.

68 "Organic source" means any nutrient source including, ~~but not limited to,~~ manures, biosolids,  
69 compost, and waste or sludges from animals, humans, or industrial processes, but for the  
70 purposes of this regulation it excludes waste from wildlife.

71 "Permittee" means the owner or operator of an animal feeding operation or animal waste end-  
72 user whose animal waste management activities are covered under this general permit.

73 "Seasonal high water table" means that portion of the soil profile where a color change has  
74 occurred in the soil as a result of saturated soil conditions or where soil concretions have formed.  
75 Typical colors are gray mottlings, solid gray, or black. The depth in the soil at which these  
76 conditions first occur is termed the seasonal high water table.

77 "State Water Control Law" means Chapter 3.1 (§ 62.1-44.2 et.seq.) of Title 62.1 of the Code  
78 of Virginia.

79 "Treatment works" means (i) a waste holding pond or tank used to store manure prior to land  
80 application or (ii) a lagoon or treatment facility used to digest or reduce the solids or nutrients.

81 "Vegetated buffer" means a permanent strip of dense perennial vegetation established  
82 parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of  
83 slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients  
84 or pollutants from leaving the field and reaching surface waters.

85 "Waste nutrient analysis rate" means a land application rate for animal waste approved by the  
86 board as specified in this regulation.

87 "Waste storage facility" means (i) a waste holding pond or tank used to store manure prior to  
88 land application, (ii) a lagoon or treatment facility used to digest or reduce the solids or nutrients,  
89 or (iii) a structure used to store manure or waste.

90 ~~"Vegetated buffer" means a permanent strip of dense perennial vegetation established~~  
91 ~~parallel to the contours of and perpendicular to the dominant slope of the field for the purposes of~~  
92 ~~slowing water runoff, enhancing water infiltration, and minimizing the risk of any potential nutrients~~  
93 ~~or pollutants from leaving the field and reaching surface waters.~~

94 ~~"300 animal units" means 300,000 pounds of live animal weight, or the following numbers and~~  
95 ~~types of animals:~~

96 ~~a. 300 slaughter and feeder cattle;~~

97 ~~b. 200 mature dairy cattle (whether milked or dry cows);~~

98 ~~c. 750 swine each weighing over 25 kilograms (approximately 55 pounds);~~

99 ~~d. 150 horses;~~

100 ~~e. 3,000 sheep or lambs;~~

101 ~~f. 16,500 turkeys;~~

102 ~~g. 30,000 laying hens or broilers.~~

103 **9VAC25-192-15. Applicability of incorporated references based on the dates that they**  
104 **became effective.**

105 Except as noted, when a regulation of the U.S. Environmental Protection Agency (EPA) set  
106 forth in Title 40 of the Code of Federal Regulations is referenced or adopted in this chapter and  
107 incorporated by reference, that regulation shall be as it exists and has been published as of July  
108 1, 2023.

109 **9VAC25-192-20. Purpose; effective date of the general permit.**

110 A. This ~~general permit regulation~~ chapter governs the pollutant management activities at  
111 animal feeding operations having 300 or more animal units utilizing a liquid manure collection and  
112 storage system not covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit  
113 and animal waste utilized or stored by animal waste end-users. ~~These~~ The owners of animal  
114 feeding operations may ~~operate~~ run and maintain treatment works for waste storage, treatment,  
115 or recycling and may perform land application of manure, wastewater, compost, or sludges.

116 B. This general permit will become effective on November 16, ~~2014~~ 2024. This general permit  
117 will expire ~~40 years from the effective date~~ on November 15, 2034.

118 **9VAC25-192-25. Duty to comply.**

119 A. Any No ~~person who manages or proposes to manage~~ pollutants regulated by 9VAC25-192  
120 shall comply with the applicable requirements of this chapter operate an animal feeding operation  
121 with 300 or more animal units utilizing a liquid manure collection and storage system after July 1,  
122 2000, without having submitted a registration statement as provided in 9VAC25-192-60 or being  
123 covered by a Virginia Pollutant Discharge Elimination System (VPDES) permit or an individual  
124 Virginia Pollution Abatement (VPA) permit.

125 B. ~~In order to manage pollutants from an animal feeding operation, the owner shall be required~~  
126 ~~to obtain coverage under the Virginia Pollution Abatement (VPA) general permit or an individual~~

127 VPA permit provided that the owner has not been required to obtain a Virginia Pollutant Discharge  
128 Elimination System (VPDES) permit. The owner shall comply with the requirements of this chapter  
129 and the permit.

130 C. An animal waste end-user shall comply with the technical requirements outlined in  
131 9VAC25-192-80 and 9VAC25-192-90.

132 **9VAC25-192-50. Authorization to manage pollutants.**

133 A. Owner of an animal feeding operation. ~~Any An~~ owner governed by of an animal feeding  
134 operation that is subject to this general permit is hereby authorized to manage pollutants at the  
135 animal feeding operations provided that the owner files ~~the a~~ registration statement ~~of in~~  
136 accordance with 9VAC25-192-60, complies with the requirements of 9VAC25-192-70, and  
137 provided that:

138 1. The owner has not been required to obtain a Virginia Pollutant Discharge Elimination  
139 System (VPDES) permit or an individual Virginia Pollution Abatement (VPA) permit  
140 according to subdivision 2 of 9VAC25-32-260.

141 2. The operation of the animal feeding operation shall not contravene the Water Quality  
142 Standards, ~~as amended, and adopted by the board,~~ (9VAC25-260) or any provision of the  
143 State Water Control Law. There shall be no point source discharge of wastewater to  
144 surface waters of the state except in the case of a storm event greater than the 25-year,  
145 24-hour storm. Agricultural stormwater discharges are permitted. Domestic sewage shall  
146 not be managed under this general permit. Industrial ~~waste~~ wastes shall not be managed  
147 under this general permit, except for wastes that have been approved by the department  
148 and are managed in accordance with 9VAC25-192-70.

149 3. The owner of any proposed pollutant management activities or those which have not  
150 previously been issued a valid ~~Virginia Pollution Abatement (VPA) general permit or an~~  
151 individual VPA permit or Virginia Pollutant Discharge Elimination System (VPDES) permit  
152 must attach a Local Government Ordinance Form to the registration statement, ~~the Local~~  
153 ~~Government Ordinance Form (a notification from the governing body of the county, city or~~  
154 ~~town where the operation is located that the operation is consistent with all ordinances~~  
155 ~~adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia).~~

156 4. The owner shall obtain Department of Conservation and Recreation approval of a  
157 nutrient management plan for the animal feeding operation prior to the submittal of the  
158 registration statement. The owner shall attach to the registration statement a copy of the  
159 approved nutrient management plan and a copy of the letter from the Department of  
160 Conservation and Recreation certifying approval of the nutrient management plan that  
161 was developed by a certified nutrient management planner in accordance with § 10.1-  
162 104.2 of the Code of Virginia. The owner shall implement the approved nutrient  
163 management plan.

164 5. ~~a.~~ The owner shall give notice of the registration statement to all owners or residents of  
165 property that adjoins the property on which the animal feeding operation will be located.

166 a. Such notice shall include (i) the types and maximum number of animals ~~which that~~  
167 will be maintained at the animal feeding operation and (ii) the address and phone  
168 number of the appropriate department regional office to which comments relevant to  
169 the registration statement may be submitted. This notice requirement is waived  
170 whenever registration is for the purpose of renewing coverage under this general  
171 permit and no expansion is proposed and the department has not issued any special  
172 order or consent order relating to violations under this existing general permit.

173 b. Any person may submit written comments on the proposed operation to the  
174 department within 30 days of the date of the filing of the registration statement. If, ~~on~~  
175 ~~the basis of~~ based on such written comments or ~~his~~ the director's review, the director  
176 determines ~~that~~ the proposed operation will not be capable of complying with the  
177 provisions of ~~the~~ this general permit, then the director shall require the owner to obtain  
178 an individual VPA permit for the operation. Any such determination by the director shall  
179 be made in writing and mailed to the owner not more than 45 days after the filing of  
180 the registration statement, or, if in the director's sole discretion additional time is  
181 necessary to evaluate comments received from the public, then not more than 60 days  
182 after the filing of the registration statement.

183 6. ~~As required by § 62.1-44.17:1 F of the Code of Virginia, each~~ Each owner of a facility  
184 an animal feeding operation covered by this general permit shall have completed the  
185 training program offered or approved by the department in the two years prior to submitting  
186 the registration statement for general permit coverage, or shall complete such training  
187 within one year after the registration statement has been submitted for general permit  
188 coverage. All permitted owners shall complete the training program at least once every  
189 three years.

190 B. Animal waste end-user. An animal waste end-user shall comply with the requirements  
191 outlined in 9VAC25-192-80 and 9VAC25-192-90.

192 1. When an animal waste end-user does not comply with the requirements of 9VAC25-  
193 192-80 and 9VAC25-192-90, the department may choose to do ~~any or all of~~ the following:

- 194 a. Initiate enforcement action based upon the violation of the regulation;
- 195 b. Require the animal waste end-user to register for coverage under ~~the~~ this general  
196 permit or apply for an individual VPA permit; and
- 197 ~~c. Require the animal waste end-user to apply for the VPA individual permit; or~~
- 198 ~~d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).~~

199 2. ~~An~~ When an animal waste end-user ~~governed by~~ is required to register for coverage  
200 under this general permit, the end-user is hereby authorized to manage ~~pollutants relating~~  
201 ~~to the utilization and storage of~~ store animal waste provided that the animal waste end-  
202 user files the registration statement of 9VAC25-192-60, complies with the requirements of  
203 9VAC25-192-70, and:

204 a. The animal waste end-user has not been required to obtain a an individual VPA  
205 ~~individual~~ permit according to subdivision 2 of 9VAC25-32-260;

206 b. The activities of the animal waste end-user shall not contravene the Water Quality  
207 Standards, ~~as amended, and adopted by the board, (9VAC25-20-260)~~ or any provision  
208 of the State Water Control Law (~~§ 62.1-44 et seq. of the Code of Virginia~~). There shall  
209 be no point source discharge of wastewater to surface waters of the state except in  
210 the case of a storm event greater than the 25-year, 24-hour storm. Agricultural  
211 stormwater discharges are permitted. Domestic sewage shall not be managed under  
212 this general permit. Industrial ~~waste~~ wastes shall not be managed under this general  
213 permit, except for wastes that have been approved by the department and are  
214 managed in accordance with 9VAC25-192-70;

215 c. The animal waste end-user shall obtain Department of Conservation and Recreation  
216 approval of a nutrient management plan for land application sites where animal waste  
217 will be utilized or stored and managed prior to the submittal of the registration  
218 statement. The animal waste end-user shall attach to the registration statement a copy

219 of the approved nutrient management plan and a copy of the letter from the  
220 Department of Conservation and Recreation certifying approval of the nutrient  
221 management plan that was developed by a certified nutrient management planner in  
222 accordance with § 10.1-104.2 of the Code of Virginia. The animal waste end-user shall  
223 implement the approved nutrient management plan; and

224 d. ~~As required by § 62.1-44.17:1 F of the Code of Virginia, each~~ Each permitted animal  
225 waste end-user shall complete a training program offered or approved by the  
226 department within one year of filing the registration statement for general permit  
227 coverage. All permitted animal waste end-users shall complete a training program at  
228 least once every three years.

229 C. Continuation of general permit coverage.

230 1. In any case where the board, through no fault of the owner or permittee, does not issue  
231 the next consecutive general permit with an effective date on or before the expiration date  
232 of the expiring general permit, [ the following applies. Any any ] owner that was authorized  
233 to manage pollutants under the this general permit issued in 2004 and that submits a  
234 complete registration statement on or before November 15, 2014, is authorized to continue  
235 to manage pollutants under the terms of the 2004 general permit in accordance with  
236 9VAC25-192-60 on or before the expiration date of the expiring general permit coverage,  
237 is authorized to continue to manage pollutants under the terms of the previously issued  
238 general permit. The conditions of the expiring general permit and any requirements of  
239 coverage granted under it shall continue in force until the effective date of the next  
240 consecutive general permit and until such time as the [ board department ] either:

241 a. Issues coverage to the owner or permittee under ~~this~~ the next consecutive general  
242 permit; or

243 b. Notifies the owner or permittee that coverage under ~~this~~ the next consecutive  
244 general permit is denied.

245 2. When the permittee that was covered under the expiring or expired general permit has  
246 violated or is violating the conditions of that general permit, the ~~board~~ department may  
247 choose to do ~~any or all~~ of the following:

248 a. Initiate enforcement action based upon the expiring or expired general permit;

249 b. Issue a notice of intent to deny coverage under the reissued general permit. If the  
250 general permit coverage is denied, then the owner ~~would then~~ will be required to cease  
251 the activities authorized by the expiring or expired general permit or be subject to  
252 enforcement action for operating without a general permit;

253 c. Issue an individual VPA permit with appropriate conditions; ~~or~~ and

254 d. Take other actions set forth in the VPA Permit Regulation (9VAC25-32).

255 D. Receipt of this general permit does not relieve any permittee of the responsibility to comply  
256 with any other applicable federal, state, or local statute, ordinance, or regulation.

257 **9VAC25-192-60. Registration statement.**

258 A. The owner of an animal feeding operation. ~~In order to~~ To be covered under ~~the~~ this general  
259 permit, the owner shall file a complete VPA General Permit Registration Statement for the  
260 management of pollutants at animal feeding operations in accordance with this chapter. The  
261 registration statement shall be deemed complete for registration under ~~the VPA General Permit~~  
262 this general permit if it contains the following information:

- 263 1. The animal feeding operation owner's name, mailing address, email address (if  
264 available), and telephone number;
- 265 2. The name, mailing address, email address (if available), and telephone number of the  
266 operator or contact person other than the owner, if applicable;
- 267 3. The farm name (if applicable) and location of the animal feeding operation;
- 268 4. The best time of day and day of the week to contact the operator or the contact person;
- 269 5. If The permit number, if the facility animal feeding operation has an existing general  
270 permit, individual VPA permit, or VPDES permit number, the permit number;
- 271 6. The ~~type or~~ types of animals (e.g., dairy cattle, slaughter and feeder cattle, swine, other)  
272 and the maximum number and average weight of the ~~type or~~ types of animals to be  
273 maintained at the animal feeding operation;
- 274 7. The types of wastes that will be managed at the ~~facility~~ animal feeding operation and  
275 how much of each type of waste will be managed;
- 276 8. If waste will be transferred off-site, then the type of waste and how much will be  
277 transferred;
- 278 9. The owner of any ~~proposed pollutant management activities~~ animal feeding operation  
279 that will manage animal waste or those ~~which that~~ have not previously been issued a valid  
280 general permit, an individual VPA permit, or a VPDES permit must attach the Local  
281 Government Ordinance Form to the registration statement, ~~the Local Government~~  
282 Ordinance Form (the notification from the governing body of the county, city or town where  
283 the operation is located that the operation is consistent with all ordinances adopted  
284 pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia);
- 285 10. A copy of the nutrient management plan approved by the Department of Conservation  
286 and Recreation;
- 287 11. A copy of the Department of Conservation and Recreation nutrient management plan  
288 approval letter that also certifies that the plan was developed by a certified nutrient  
289 management planner in accordance with § 10.1-104.2 of the Code of Virginia; and
- 290 12. The following certification: "I certify that notice of the registration statement has been  
291 given to all owners or residents of property that adjoins the property on which the animal  
292 feeding operation will be located. This notice included the types and numbers of animals  
293 ~~which that~~ will be maintained at the ~~facility~~ animal feeding operation and the address and  
294 phone number of the appropriate Department of Environmental Quality regional office to  
295 which comments relevant to ~~the~~ this general permit may be submitted. (The preceding  
296 certification is waived if the registration is for renewing coverage under ~~the~~ this general  
297 permit, and no expansion of the operation is proposed, and the department has not issued  
298 any special order or consent order relating to violations under the existing general permit.)  
299 I certify under penalty of law that all the requirements of the board for ~~the~~ this general  
300 permit are being met and that this document and all attachments were prepared under my  
301 direction or supervision in accordance with a system designed to ~~assure~~ ensure that  
302 qualified personnel properly gather and evaluate the information submitted. Based on my  
303 inquiry of the person or persons who manage the system or those persons directly  
304 responsible for gathering the information, the information submitted is to the best of my  
305 knowledge and belief true, accurate, and complete. I am aware that there are significant  
306 penalties for submitting false information including the possibility of fine and imprisonment  
307 for knowing violations."

308 B. The animal waste end-user. ~~In order to~~ To be covered under ~~the~~ this general permit, the  
309 animal waste end-user shall file a complete VPA General Permit Registration Statement in  
310 accordance with this chapter. The registration statement shall be deemed complete for  
311 registration under ~~the VPA General Permit~~ this general permit if it contains the following  
312 information:

- 313 1. The animal waste end-user's name, mailing address, email address (if available), and  
314 telephone number;
- 315 2. The name (if applicable) and location ~~of the facility~~ where the animal waste will be  
316 utilized, stored, or managed;
- 317 3. The best time of day and day of the week to contact the animal waste end-user;
- 318 4. ~~If~~ The permit number if the facility animal waste end-user has an existing general permit,  
319 an individual VPA permit, or a VPDES permit number, the permit number;
- 320 5. ~~If confined animals are located at the facility also confined, then~~ indicate the ~~type or~~  
321 types of animals (e.g., dairy cattle, slaughter and feeder cattle, swine, other) and the  
322 maximum number and average weight of the ~~type or types of animals;~~
- 323 6. The types of wastes that will be managed ~~at the facility~~ by the animal waste end-user  
324 and how much of each type of waste will be managed;
- 325 7. If waste will be transferred off-site, then the type of waste and how much will be  
326 transferred;
- 327 8. A copy of the nutrient management plan approved by the Department of Conservation  
328 and Recreation;
- 329 9. A copy of the Department of Conservation and Recreation nutrient management plan  
330 approval letter that also certifies that the plan was developed by a certified nutrient  
331 management planner in accordance with § 10.1-104.2 of the Code of Virginia; and
- 332 10. The following certification: "I certify under penalty of law that all the requirements of  
333 the board for ~~the~~ this general permit are being met and that this document and all  
334 attachments were prepared under my direction or supervision in accordance with a system  
335 designed to ~~assure~~ ensure that qualified personnel properly gather and evaluate the  
336 information submitted. Based on my inquiry of the person or persons who manage the  
337 system or those persons directly responsible for gathering the information, the information  
338 submitted is to the best of my knowledge and belief true, accurate, and complete. I am  
339 aware that there are significant penalties for submitting false information including the  
340 possibility of fine and imprisonment for knowing violations."

341 C. The registration statement shall be signed in accordance with ~~Part II F of~~ subdivision 1 of  
342 9VAC25-32-70.

343 **9VAC25-192-70. Contents of the general permit.**

344 Any owner or animal waste end-user whose registration statement is accepted by the ~~board~~  
345 department will receive the following general permit and shall comply with the requirements  
346 therein of the general permit and be subject to the VPA ~~permit regulation~~ Permit Regulation,  
347 9VAC25-32.

348 General Permit No.: VPG1

349 Effective Date: November 16, ~~2014~~ 2024

350 Expiration Date: November 15, ~~2024~~ 2034

351 GENERAL PERMIT FOR POLLUTANT MANAGEMENT ACTIVITIES FOR ANIMAL  
352 FEEDING OPERATIONS AND ANIMAL WASTE MANAGEMENT

353 AUTHORIZATION TO MANAGE POLLUTANTS UNDER THE VIRGINIA POLLUTION  
354 ABATEMENT PROGRAM AND THE VIRGINIA STATE WATER CONTROL LAW

355 In compliance with the provisions of the State Water Control Law and State Water Control  
356 Board regulations adopted pursuant thereto, owners of animal feeding operations having 300 or  
357 more animal units utilizing a liquid manure collection and storage system, and animal waste end-  
358 users are authorized to manage pollutants within the boundaries of the Commonwealth of Virginia,  
359 except where board regulations prohibit such activities.

360 The authorized pollutant management activities shall be in accordance with the registration  
361 statement, supporting documents submitted to the Department of Environmental Quality, this  
362 cover page, Part I-Pollutant Management and Monitoring Requirements for Animal Feeding  
363 Operations, Part II-Conditions Applicable to ~~all VPA Permits~~ this General Permit, and Part III-  
364 Pollutant Management and Monitoring Requirements for Animal Waste End-Users, as set forth  
365 ~~herein~~ in this section.

366 Part I

367 Pollutant Management and Monitoring Requirements for Animal Feeding Operations

368 A. Pollutant management and monitoring requirements.

369 1. During the period beginning with ~~the~~ this general permit's effective date and lasting until  
370 ~~the~~ this general permit's expiration date, the permittee is authorized to manage pollutants  
371 at the location ~~or locations~~ identified in the registration statement and the facility's  
372 approved nutrient management plan written for the animal feeding operation.

373 2. At earthen liquid waste storage facilities constructed after December 1, 1998, to an  
374 elevation below the seasonal high water table or within one foot thereof, groundwater  
375 monitoring wells shall be installed. A minimum of one up gradient and one down gradient  
376 well shall be installed at each earthen waste storage facility that requires groundwater  
377 monitoring. Existing wells may be utilized to meet this requirement if properly located and  
378 constructed.

379 3. All ~~facilities~~ animal feeding operations previously covered under a general permit, an  
380 individual VPA permit, or a VPDES permit that required groundwater monitoring shall  
381 continue monitoring consistent with the requirements listed ~~below~~ in this part regardless  
382 of where ~~they~~ the animal feeding operations are located relative to the seasonal high water  
383 table.

384 4. At ~~facilities~~ animal feeding operations where groundwater monitoring is required, the  
385 following conditions apply:

386 a. One data set shall be collected from each well prior to any waste being placed in  
387 the storage facility.

388 b. The static water level shall be measured prior to bailing well water for sampling.

389 c. At least three well volumes of groundwater shall be withdrawn immediately prior to  
390 sampling each monitoring well.

391 5. In accordance with subdivisions 2 and 3 of this subsection, the groundwater shall be  
392 monitored by the permittee at the monitoring wells as specified ~~below~~ in Table 1 of Part I.

393 Additional groundwater monitoring may be required in the facility's approved nutrient  
 394 management plan written for the animal feeding operation.

395 6. If groundwater monitoring results for any monitored parameter demonstrate potential  
 396 noncompliance with this general permit related to the waste storage facility, then the  
 397 permittee shall submit an approvable groundwater monitoring action plan that outlines  
 398 appropriate measures to be taken to address the noncompliance. The groundwater  
 399 monitoring action plan shall be submitted to the department within 30 days of obtaining  
 400 the monitoring results.

401 7. The analysis of the groundwater samples for ammonia nitrogen and nitrate nitrogen  
 402 shall be performed by a laboratory accredited under the Virginia Environmental Laboratory  
 403 Accreditation Program (VELAP) in accordance with 1VAC30-46-20. Field sampling,  
 404 testing, and measurement of the static water level, pH, and conductivity where the sample  
 405 is taken are not subject to the VELAP requirement.

TABLE 1  
 GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	Ft	1/3 years	Measured
Ammonia Nitrogen	NL	mg/L	1/3 years	Grab
Nitrate Nitrogen	NL	mg/L	1/3 years	Grab
pH	NL	SU	1/3 years	Grab
Conductivity	NL	$\mu\text{mhos/cm}$ $\mu\text{mhos/cm}$	1/3 years	Grab

NL = No limit, this is a monitoring requirement only.

406 ~~6. 8.~~ Soil at the land application sites shall be monitored as specified below in Table 2 of  
 407 Part I. Additional soils monitoring may be required in the facility's approved nutrient  
 408 management plan written for the animal feeding operation.

TABLE 2  
 SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

409 7. 9. Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise  
410 specified in the facility's approved nutrient management plan written for the animal feeding  
411 operation.

412 8. 10. Waste shall be monitored as specified below in Table 3 of Part I. Additional waste  
413 monitoring may be required in the facility's approved nutrient management plan written for  
414 the animal feeding operation.

TABLE 3  
WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite
Ammonia Nitrogen	NL	*	1/year	Composite
Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium	NL	*	1/year	Composite
Magnesium	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

\*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

415 9. 11. Analysis of soil and waste shall be according to methods specified in the facility's  
416 approved nutrient management plan written for the animal feeding operation.

417 ~~10.~~ 12. All monitoring data collected as required by this section and any additional  
418 monitoring shall be maintained on site for a period of five years and shall be made  
419 available to department personnel upon request.

420 B. Other Site design, storage, and operations requirements or special conditions.

421 1. Any liquid manure collection and storage facility shall be designed and operated to (i)  
422 prevent point source discharges of pollutants to state waters except in the case of a storm  
423 event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage  
424 capacity to accommodate periods when the ground is frozen or saturated, periods when  
425 land application of nutrients should not occur due to limited or nonexistent crop nutrient  
426 uptake, and periods when physical limitations prohibit the land application of waste.

427 2. Waste storage facilities constructed after December 1, 1998, shall not be located on a  
428 100-year floodplain. For the purposes of determining the 100-year floodplain, a Federal  
429 Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA  
430 Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be  
431 used.

- 432 3. Earthen waste storage facilities constructed after December 1, 1998, shall include a  
433 properly designed and installed liner. Such liner shall be either a synthetic liner of at least  
434 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum  
435 permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer or  
436 an employee of the Natural Resources Conservation Service of the ~~United States~~ U.S.  
437 Department of Agriculture with appropriate engineering approval authority shall certify that  
438 the siting, design, and construction of the waste storage facility comply with the  
439 requirements of this general permit. This certification shall be maintained on site.
- 440 4. At earthen waste storage facilities constructed below the seasonal high water table, the  
441 top surface of the waste must be maintained at a level of at least two feet above the water  
442 table.
- 443 5. All liquid waste storage ~~or treatment~~ facilities shall maintain at least one foot of freeboard  
444 at all times, up to and including a 25-year, 24-hour storm.
- 445 6. For new waste storage ~~or treatment~~ facilities constructed after November 16, 2014, the  
446 facilities shall be constructed, operated, and maintained in accordance with the applicable  
447 practice standard adopted by the Natural Resources Conservation Service of the U.S.  
448 Department of Agriculture and approved by the department. A Virginia licensed  
449 professional engineer or an employee of the Natural Resources Conservation Service of  
450 the U.S. Department of Agriculture with appropriate engineering approval authority shall  
451 certify that the siting, design, and construction of the waste storage facility comply with the  
452 requirements of this general permit. This certification shall be maintained on site.
- 453 7. The permittee shall notify the department's regional office at least 14 days prior to (i)  
454 animals being initially placed in the confined facility animal feeding operation or (ii) the  
455 utilization of any new waste storage ~~or treatment~~ facilities.
- 456 8. Semi-solid and solid waste shall be stored in a manner that prevents contact with  
457 surface water and groundwater. Waste that is stockpiled outside for more than 14 days  
458 shall be kept in a waste storage facility or at a site that provides adequate storage.  
459 Adequate storage shall, at a minimum, include the following:
- 460 a. Waste shall be covered to protect it from precipitation and wind;
  - 461 b. Stormwater shall not run onto or under the stored waste;
  - 462 c. A minimum of two feet separation distance to the seasonal high water table or an  
463 impermeable barrier shall be used under the stored waste. All waste storage facilities  
464 that use an impermeable barrier shall maintain a minimum of one foot separation  
465 between the seasonal high water table and the impermeable barrier. "~~Seasonal high  
466 water table" means that portion of the soil profile where a color change has occurred  
467 in the soil as a result of saturated soil conditions or where soil concretions have  
468 formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at  
469 which these conditions first occur is termed the seasonal high water table.~~  
470 Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at  
471 least four inches of reinforced concrete, or another material of similar structural  
472 integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10<sup>-6</sup>  
473 centimeters per second); and
  - 474 d. For waste that is not stored in a waste storage facility or under roof, the storage site  
475 must be at least 100 feet from any surface water, intermittent drainage, wells,  
476 sinkholes, rock outcrops, and springs. For semi-solid and solid waste that is stored on  
477 an impermeable barrier and where any stormwater runoff is collected in the waste

478 storage facility, the semi-solid and solid waste can be stored adjacent to the waste  
479 storage facility regardless of the location of the waste storage facility so long as any  
480 surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs are  
481 protected from runoff from the stored semi-solid and solid waste.

482 Semi-solid and solid waste that is stored on an impermeable barrier and where any  
483 stormwater runoff is collected in a waste storage facility is considered adequate storage  
484 and is therefore not required to be covered.

485 9. All equipment needed for the proper operation of the permitted facilities animal feeding  
486 operations shall be maintained in good working order. The manufacturer's operating and  
487 maintenance manuals shall be retained for references to allow for timely maintenance and  
488 prompt repair of equipment when appropriate. The permittee shall periodically inspect for  
489 leaks on equipment used for land application of waste.

490 10. When wastes are treated by a digester or other manure treatment technologies, the  
491 waste treatment process shall be approved by the department and shall be managed by  
492 a facility the owner of an animal feeding operation covered under this general permit and  
493 in accordance with the following conditions:

494 a. All treated wastes generated by a digester or other manure treatment technologies  
495 must be managed through an approved nutrient management plan or transferred to  
496 another entity in accordance with animal waste transfer requirements in Part 1 ~~B-15~~ C  
497 6 and 16 7.

498 b. When ~~a facility~~ an animal feeding operation covered under this general permit  
499 generates a treated waste from animal waste and other feedstock, the permittee shall  
500 maintain records related to the production of the treated waste.

501 (1) If off-site wastes are added to generate the treated waste, then the permittee shall  
502 record the following items:

503 (a) The amount of waste brought to the ~~facility~~ animal feeding operation; and

504 (b) From whom and where the waste originated.

505 (2) For all treated wastes generated by the ~~facility~~ animal feeding operation, the  
506 permittee shall record the following items:

507 (a) The amount of treated waste generated;

508 (b) The nutrient analysis of the treated waste; and

509 (c) The final use of the treated waste.

510 (3) Permittees shall maintain the records required by Part I B 10 b (1) and (2) on site  
511 for a period of three years. All records shall be made available to department personnel  
512 upon request.

513 11. When the waste storage facility is no longer needed, the permittee shall close it in a  
514 manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or  
515 eliminates, to the extent necessary to protect human health and the environment, the  
516 postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition  
517 products to the groundwater, surface water, or the atmosphere. Prior to closure, the  
518 permittee shall notify the department of any plans to close a liquid waste storage facility.  
519 At closure, the permittee shall remove all waste residue from the animal waste storage  
520 facility. Removed waste materials shall be utilized according to the approved NMP.

521 C. Animal waste use and transfer requirements.

522 1. Animal waste generated by this facility an animal feeding operation that is subject to  
523 this general permit shall not be applied to fields owned by or under the operational control  
524 of either the permittee or a legal entity in which the permittee has an ownership interest  
525 unless the fields are included in the facility's approved nutrient management plan written  
526 for the animal feeding operation.

527 ~~12. 2.~~ The permittee shall implement a nutrient management plan (NMP) developed by a  
528 certified nutrient management planner in accordance with § 10.1-104.2 of the Code of  
529 Virginia and approved by the Department of Conservation and Recreation and maintain  
530 the plan NMP on site. [ All Within 30 days of the approval by the Department of  
531 Conservation and Recreation, all ] revised [ and Department of Conservation and  
532 Recreation approved ] NMPs shall be submitted to the department [ prior to the expiration  
533 of the previous NMP ] . The NMP shall address the form, source, amount, timing, and  
534 method of application of nutrients on each field to achieve realistic production goals, while  
535 minimizing nitrogen and phosphorus loss to ground waters and surface waters. The terms  
536 of the NMP shall be enforceable through this general permit. The NMP shall contain at a  
537 minimum the following information:

538 a. Site map indicating the location of the waste storage facilities and the fields where  
539 waste will be applied;

540 b. Site evaluation and assessment of soil types and potential productivities;

541 c. Nutrient management sampling, including soil and waste monitoring;

542 d. Storage and land area requirements;

543 e. Calculation of waste application rates; and

544 f. Waste application schedules.

545 ~~13. 3.~~ Waste shall not be land applied within buffer zones. Buffer zones at waste  
546 application sites shall, at a minimum, be maintained as follows:

547 a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless  
548 the occupant of the dwelling signs a waiver of the buffer zone);

549 b. Distance from water supply wells or springs: 100 feet;

550 c. Distance from surface water courses: 100 feet (without a ~~permanent~~ vegetated  
551 buffer) or 35 feet (if a ~~permanent~~ vegetated buffer exists). Other site-specific  
552 conservation practices may be approved by the department that will provide pollutant  
553 reductions equivalent or better than the reductions that would be achieved by the 100-  
554 foot buffer or 35-foot wide vegetated buffer;

555 d. Distance from rock outcropping (except limestone): 25 feet;

556 e. Distance from limestone outcroppings: 50 feet; and

557 f. Waste shall not be applied in such a manner that it would discharge to sinkholes that  
558 may exist in the area.

559 ~~14. 4.~~ The following land application records shall be maintained:

560 a. The identification of the land application field sites where the waste is utilized or  
561 stored;

562 b. The application rate;

563 c. The application dates; and

564 d. What crops have been planted.

565 These records shall be maintained on site for a period of five years after the date the  
566 application is made and shall be made available to department personnel upon request.

567 5. In cases where a waste storage facility is threatened by emergencies such as fire or  
568 flood or where these conditions are imminent, animal waste can be land applied outside  
569 of the spreading schedule outlined in the NMP written for an animal feeding operation. If  
570 this occurs, then the owner of the animal feeding operation shall document the land  
571 application information in accordance with Part I C 4 and notify the department in  
572 accordance with Part II F 3.

573 ~~15.~~ 6. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject  
574 to this general permit may be transferred from the permittee to another person if one or  
575 more of the following conditions are met:

576 a. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject  
577 to this general permit may be transferred off-site for land application or another  
578 acceptable use approved by the department, if:

579 (1) The sites where the animal waste will be utilized are included in ~~this permitted~~  
580 ~~facility's~~ the animal feeding operation's approved nutrient management plan; or

581 (2) The sites where the animal waste will be utilized are included in another permitted  
582 ~~facility's~~ entity's approved nutrient management plan.

583 b. Animal waste generated by ~~this facility~~ an animal feeding operation that is subject  
584 to this general permit may be transferred off-site without identifying in the permittee's  
585 approved nutrient management plan the fields where such waste will be utilized, if one  
586 of the following conditions are met:

587 (1) The animal waste is registered with the Virginia Department of Agriculture and  
588 Consumer Services in accordance with regulations adopted pursuant to ~~subdivision A~~  
589 ~~2~~ of § 3.2-3607 A 2 of the Code of Virginia; or

590 (2) When the permittee transfers to another person more than 10 tons of solid or semi-  
591 solid animal waste (solid or semi-solid animal waste contains less than 85% moisture)  
592 or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85%  
593 or more moisture) in any 365-day period, the permittee shall maintain records in  
594 accordance with Part I ~~B-16~~ C 7.

595 ~~16.~~ 7. Animal waste may be transferred from a permittee to another person without  
596 identifying the fields where such waste will be utilized in the permittee's approved nutrient  
597 management plan if the following conditions are met:

598 a. When a permittee transfers to another person more than 10 tons of solid or semi-  
599 solid animal waste (solid or semi-solid animal waste contains less than 85% moisture)  
600 or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85%  
601 or more moisture) in any 365-day period, the permittee shall provide that person with:

602 (1) Permittee's name, address, and permit number;

603 (2) A copy of the most recent nutrient analysis of the animal waste; and

604 (3) An animal waste fact sheet.

605 b. When a permittee transfers to another person more than 10 tons of solid or semi-  
606 solid animal waste (solid or semi-solid animal waste contains less than 85% moisture)  
607 or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85%

608 or more moisture) in any 365-day period, the permittee shall keep a record of the  
609 following:

- 610 (1) The ~~recipient~~ recipient's name and address;
- 611 (2) The amount of animal waste received by the person;
- 612 (3) The date of the transaction;
- 613 (4) The nutrient analysis of the animal waste;
- 614 (5) The locality in which the recipient intends to utilize the animal waste (i.e., nearest  
615 town or city and zip code);
- 616 (6) The name of the stream or waterbody, if known, to the recipient that is nearest to  
617 the animal waste utilization or storage site; and
- 618 (7) The signed waste transfer records form acknowledging the receipt of the following:
- 619 (a) The animal waste;
- 620 (b) The nutrient analysis of the animal waste; and
- 621 (c) An animal waste fact sheet.

622 c. Permittees shall maintain the records required by Part I ~~B-46~~ C 7 a and b for at least  
623 three years after the date of the transaction and shall make them available to  
624 department personnel upon request.

625 ~~17. When the waste storage or treatment facility is no longer needed, the permittee shall~~  
626 ~~close it in a manner that (i) minimizes the need for further maintenance and (ii) controls,~~  
627 ~~minimizes, or eliminates, to the extent necessary to protect human health and the~~  
628 ~~environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste~~  
629 ~~decomposition products to the groundwater, surface water, or the atmosphere. At closure,~~  
630 ~~the permittee shall remove all waste residue from the animal waste storage or treatment~~  
631 ~~facility. Removed waste materials shall be utilized according to the approved NMP.~~

632 ~~18. As required by § 62.1-44.17:1 F of the Code of Virginia, each~~ D. Each permittee covered  
633 under this general permit shall have completed the training program offered or approved by the  
634 department in the two years prior to submitting the registration statement for this general permit  
635 coverage, or shall complete such training within one year after the registration statement has been  
636 submitted for this general permit coverage. All permittees shall complete the training program at  
637 least once every three years.

638 Part II  
639 Conditions Applicable to ~~all VPA Permits~~ this General Permit

640 A. ~~Sampling and analysis methods~~ Monitoring.

641 1. Samples and measurements taken as required by this general permit shall be  
642 representative of the ~~volume and nature of the~~ monitored activity.

643 2. ~~Unless otherwise specified in this permit all sample preservation methods, maximum~~  
644 ~~holding times and analysis methods for pollutants~~ Groundwater monitoring shall comply  
645 ~~with requirements set forth in Guidelines Establishing Test Procedures for the Analysis of~~  
646 ~~Pollutants (40 CFR Part 136) be conducted according to procedures listed under 40 CFR~~  
647 Part 136 unless otherwise specified in this general permit.

648 3. ~~The sampling and analysis program to demonstrate compliance with the permit shall at~~  
649 ~~a minimum, conform to Part I of this permit.~~

650 4. The permittee shall periodically calibrate and perform maintenance procedures on all  
651 monitoring and analytical instrumentation at intervals that will ensure accuracy of  
652 measurements.

653 4. If the permittee monitors any pollutant at the locations designated in this general permit  
654 more frequently than required by this general permit, using approved analytical methods  
655 as specified in this part, the results of such monitoring shall be included in the calculation  
656 and reporting of the values required in the project report. Such increased frequency shall  
657 also be reported.

658 B. ~~Recording of results~~ Records. ~~For each measurement or sample taken pursuant to the~~  
659 ~~requirements of this permit, the permittee shall record the following~~

660 1. Records of monitoring information shall include:

661 1. a. The date, exact place, and time of sampling or measurements;

662 2. b. The persons name of the individuals who performed the sampling or  
663 measurements;

664 3. c. The dates analyses were performed;

665 4. d. The persons name of the individuals who performed each analysis;

666 5. e. The analytical techniques or methods used with supporting information such as  
667 observations, readings, calculations, and bench data; and

668 6. f. The results of such analyses and measurements.

669 2. The permittee shall retain records of all monitoring information, including all calibration  
670 and maintenance records and all original strip chart recordings for continuous monitoring  
671 instrumentation, copies of all reports required by this general permit, and records of all  
672 data used to complete the application for this general permit for a period of at least three  
673 years from the date of the sample, measurement, report, or application. This period of  
674 retention may be extended by request of the department at any time.

675 C. ~~Records retention~~ Reporting monitoring results. ~~All records and information resulting from~~  
676 ~~the monitoring activities If reporting is required by Part I or Part III of this general permit, including~~  
677 ~~all records of analyses performed and calibration and maintenance of instrumentation and~~  
678 ~~recording from continuous monitoring instrumentation the permittee shall be retained on-site for~~  
679 ~~five years from the date of the sample, measurement or report. This period of retention shall be~~  
680 ~~extended automatically during the course of any unresolved litigation regarding the regulated~~  
681 ~~activity or regarding control standards applicable to the permittee, or as requested by the director~~  
682 ~~follow the requirements of this subsection.~~

683 1. The permittee shall submit the results of the monitoring required by this general permit  
684 not later than the 10th day of the month after the monitoring takes place, unless another  
685 reporting schedule is specified elsewhere in this general permit. Monitoring results shall  
686 be submitted to the department's regional office.

687 2. Monitoring results shall be reported on forms provided or specified by the department.

688 3. If the permittee monitors the pollutant management activity, at a sampling location  
689 specified in this general permit, for any pollutant more frequently than required by this  
690 general permit using approved analytical methods, the permittee shall report the results  
691 of this monitoring on the monitoring report.

692 4. If the permittee monitors the pollutant management activity, at a sampling location  
693 specified in this general permit, for any pollutant that is not required to be monitored by

694 the general permit, and uses approved analytical methods, the permittee shall report the  
695 results with the monitoring report.

696 5. Calculations for all limitations that require averaging of measurements shall utilize an  
697 arithmetic mean unless otherwise specified in this general permit.

698 ~~D. Additional monitoring by permittee~~ Duty to provide information. If the permittee monitors  
699 any pollutant at the locations designated herein more frequently than required by this permit, using  
700 approved analytical methods as specified above, the results of such monitoring shall be included  
701 in the calculation and reporting of the values required in the project report. Such increased  
702 frequency shall also be reported. The permittee shall furnish to the department, within a  
703 reasonable time, any information that the director may request to determine whether cause exists  
704 for modifying, revoking and reissuing, or terminating this general permit or to determine  
705 compliance with this general permit. The permittee shall also furnish to the department, upon  
706 request, copies of records required to be kept by the permittee. Plans, specifications, maps,  
707 conceptual reports, and other relevant information shall be submitted as requested by the director  
708 prior to commencing construction.

709 ~~E. Reporting requirements~~ Unauthorized discharges. Except in compliance with this general  
710 permit or another issued by the department, it shall be unlawful for any person to:

711 ~~1. If, for any reason, the permittee does not comply with one or more limitations, standards,~~  
712 ~~monitoring or management requirements specified in this permit, the permittee shall~~  
713 ~~submit to the department at least the following information:~~

714 ~~a. A description and cause of noncompliance;~~

715 ~~b. The period of noncompliance, including exact dates and times or the anticipated~~  
716 ~~time when the noncompliance will cease; and~~

717 ~~c. Actions taken or to be taken to reduce, eliminate, and prevent recurrence of the~~  
718 ~~noncompliance. Whenever such noncompliance may adversely affect state waters or~~  
719 ~~may endanger public health, the permittee shall submit the above required information~~  
720 ~~by oral report within 24 hours from the time the permittee becomes aware of the~~  
721 ~~circumstances and by written report within five days. The director may waive the~~  
722 ~~written report requirement on a case-by-case basis if the oral report has been received~~  
723 ~~within 24 hours and no adverse impact on state waters has been reported.~~

724 ~~2. The permittee shall report any unpermitted, unusual or extraordinary discharge which~~  
725 ~~enters or could be expected to enter state waters. The permittee shall provide information,~~  
726 ~~specified in Part II E 1 a through c, regarding each such discharge immediately, that is, as~~  
727 ~~quickly as possible upon discovery, however, in no case later than 24 hours. A written~~  
728 ~~submission covering these points shall be provided within five days of the time the~~  
729 ~~permittee becomes aware of the circumstances covered by this paragraph.~~

730 ~~NOTE: The immediate (within 24 hours) reports required in Parts II E 1 and 2 may be made~~  
731 ~~to the department's regional office. Reports may be made by telephone. For reports outside~~  
732 ~~normal working hours, a message shall fulfill the immediate reporting requirement. For~~  
733 ~~emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone~~  
734 ~~service at 1-800-468-8892.~~

735 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or  
736 deleterious substances; or

737 2. Otherwise alter the physical, chemical, or biological properties of such state waters and  
738 make them detrimental to the public health or to animal or aquatic life or to the use of such  
739 waters for domestic or industrial consumption or for recreation or for other uses.

740 F. Signatory requirements Notice of planned changes, and reports of unauthorized  
741 discharges, unusual or extraordinary discharges, noncompliance, and compliance schedules.  
742 Any registration statement or certification required by this permit shall be signed as follows:

743 1. For a corporation, by a responsible corporate official Notice of planned changes. For  
744 purposes of this section, a responsible corporate official means (i) a president, secretary,  
745 treasurer, or vice president of the corporation in charge of a principal business function,  
746 or any other person who performs similar policy or decision-making functions for the  
747 corporation, or (ii) the manager of one or more manufacturing, production, or operating  
748 facilities employing more than 250 persons or having gross annual sales or expenditures  
749 exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents  
750 has been assigned or delegated to the manager in accordance with corporate procedures.

751 a. The permittee shall give notice to the department as soon as possible of any  
752 planned physical alterations or additions to the design or operation of the pollutant  
753 management activity.

754 b. The permittee shall give at least 10 days advance notice to the department of any  
755 planned changes in the permitted facility or activity that may result in noncompliance  
756 with the general permit requirements.

757 2. For a municipality, state, federal or other public agency by either a principal executive  
758 officer or ranking elected official Reports of unauthorized discharges. (A principal  
759 executive officer of a federal, municipal, or state agency includes the chief executive  
760 officer of the agency or head executive officer having responsibility for the overall  
761 operation of a principal geographic unit of the agency.) Any permittee who discharges or  
762 causes or allows (i) a discharge of sewage, industrial wastes, other wastes, or any noxious  
763 or deleterious substance into or upon state waters in violation of Part II E, or (ii) a discharge  
764 that may reasonably be expected to enter state waters in violation of Part II E shall notify  
765 the department of the discharge immediately upon discovery of the discharge, but in no  
766 case later than 24 hours after said discovery. A written report of the unauthorized  
767 discharge shall be submitted to the department within five days of discovery of the  
768 discharge. The written report shall contain:

769 a. A description of the nature and location of the discharge;

770 b. The cause of the discharge;

771 c. The date on which the discharge occurred;

772 d. The length of time that the discharge continued;

773 e. The volume of the discharge;

774 f. If the discharge is continuing, how long it is expected to continue;

775 g. If the discharge is continuing, what the expected total volume of the discharge will  
776 be; and

777 h. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the  
778 present discharge or any future discharges not authorized by this general permit.

779 Discharges reportable to the department under the immediate reporting requirements of  
780 other regulations are exempted from this requirement.

781 3. For a partnership or sole proprietorship, by a general partner or proprietor respectively  
782 Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge,  
783 including a bypass or upset, should occur from a treatment works and the discharge enters

784 or could be expected to enter state waters, the permittee shall promptly notify, in no case  
785 later than 24 hours, the department by telephone after the discovery of the discharge. This  
786 notification shall provide all available details of the incident, including any adverse effects  
787 on aquatic life and the known number of fish killed. The permittee shall reduce the report  
788 to writing and shall submit it to the department within five days of discovery of the  
789 discharge in accordance with Part II F 4 b. Unusual and extraordinary discharges include  
790 any discharge resulting from:

791 a. Unusual spillage of materials resulting directly or indirectly from processing  
792 operations;

793 b. Breakdown of processing or accessory equipment;

794 c. Failure or taking out of service some or all of the treatment works; and

795 d. Flooding or other acts of nature.

796 4. Reports of noncompliance. The permittee shall report any noncompliance that may  
797 adversely affect state waters or may endanger public health.

798 a. An oral report shall be provided within 24 hours from the time the permittee becomes  
799 aware of the circumstances. The following shall be included as information that shall  
800 be reported within 24 hours under this subdivision 4 a:

801 (1) Any unanticipated bypass; and

802 (2) Any upset that causes a discharge to surface waters.

803 b. A written report shall be submitted within five days and shall contain:

804 (1) A description of the noncompliance and its cause;

805 (2) The period of noncompliance, including exact dates and times, and if the  
806 noncompliance has not been corrected, the anticipated time it is expected to continue;  
807 and

808 (3) Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the  
809 noncompliance.

810 The department may waive the written report on a case-by-case basis for reports of  
811 noncompliance under Part II F 4 if the oral report has been received within 24 hours  
812 and no adverse impact on state waters has been reported.

813 c. The permittee shall report all instances of noncompliance not reported under Part II  
814 F 4 a or b in writing at the time the next monitoring reports are submitted. The reports  
815 shall contain the information listed in Part II F 4 b.

816 NOTE: The immediate (within 24 hours) reports required in Part II F may be made to the  
817 department's regional office. For reports outside normal working hours, leave a message  
818 and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia  
819 Department of Emergency Management maintains a 24-hour telephone service at 1-800-  
820 468-8892.

821 5. Reports of compliance or noncompliance with, or any progress reports on, interim and  
822 final requirements contained in any compliance schedule of this general permit shall be  
823 submitted no later than 14 days following each schedule date.

824 G. Change in management of pollutants Proper operation and maintenance. All pollutant  
825 management activities authorized by this permit shall be made in accordance with the terms and  
826 conditions of the permit. The permittee shall submit a new registration statement 30 days prior to

827 all expansions, production increases, or process modifications, that will result in the management  
828 of new or increased pollutants be responsible for the proper operation and maintenance of all  
829 treatment works, systems, and controls that are installed or used to achieve compliance with the  
830 conditions of this permit. Proper operation and maintenance includes effective plant performance,  
831 adequate funding, adequate staffing, and adequate laboratory and process controls, including  
832 appropriate quality assurance procedures. The management of any pollutant at a level greater  
833 than that identified and authorized by this permit, shall constitute a violation of the terms and  
834 conditions of this permit.

835 H. ~~Treatment works operation and quality control~~ Signatory requirements.

836 1. ~~Design and operation of facilities or treatment works and disposal of all wastes shall be~~  
837 ~~in accordance with the registration statement filed with the department. The permittee has~~  
838 ~~the responsibility of designing and operating the facility in a reliable and consistent manner~~  
839 ~~to meet the facility performance requirements in the permit. If facility deficiencies, design~~  
840 ~~or operational, are identified in the future which could affect the facility performance or~~  
841 ~~reliability, it is the responsibility of the permittee to correct such deficiencies~~ Applications.  
842 All general permit applications shall be signed as follows:

843 a. For a corporation: by a responsible corporate officer. For the purpose of this section,  
844 a responsible corporate officer means (i) a president, secretary, treasurer, or vice-  
845 president of the corporation in charge of a principal business function, or any other  
846 person who performs similar policy-making or decision-making functions for the  
847 corporation or (ii) the manager of one or more manufacturing, production, or operating  
848 facilities employing more than 250 persons or having gross annual sales or  
849 expenditures exceeding \$25 million (in second-quarter 1980 dollars) if authority to sign  
850 documents has been assigned or delegated to the manager in accordance with  
851 corporate procedures;

852 b. For a partnership or sole proprietorship: by a general partner or the proprietor,  
853 respectively; or

854 c. For a municipality, state, federal, or other public agency: by either a principal  
855 executive officer or ranking elected official. For purposes of this section, a principal  
856 executive officer of a public agency includes (i) the chief executive officer of the agency  
857 or (ii) a senior executive officer having responsibility for the overall operations of a  
858 principal geographic unit of the agency.

859 2. ~~All waste collection, control, treatment, management of pollutant activities and disposal~~  
860 ~~facilities shall be operated in a manner consistent with the following~~ Reports and other  
861 information. All reports required by general permits and other information requested by  
862 the department shall be signed by a person described in Part II H 1 or by a duly authorized  
863 representative of that person. A person is a duly authorized representative only if:

864 a. At all times, all facilities and pollutant management activities shall be operated in a  
865 prudent and workmanlike manner. The authorization is made in writing by a person  
866 described in Part II H 1;

867 b. The permittee shall provide an adequate operating staff to carry out the operation,  
868 maintenance and testing functions required to ensure compliance with the conditions  
869 of this permit. authorization specifies either an individual or a position having  
870 responsibility for the overall operation of the regulated facility or activity, such as the  
871 position of plant manager, operator of a well or a well field, superintendent, or a  
872 position of equivalent responsibility. A duly authorized representative may thus be  
873 either a named individual or any individual occupying a named position; and

874 c. Maintenance of treatment facilities or pollutant management activities shall be  
875 carried out in such a manner that the monitoring and limitation requirements are not  
876 violated The written authorization is submitted to the department.

877 d. Collected solids shall be stored and utilized as specified in the approved nutrient  
878 management plan in such a manner as to prevent entry of those wastes (or runoff from  
879 the wastes) into state waters.

880 3. Changes to authorization. If an authorization under Part II H 2 is no longer accurate  
881 because a different individual or position has responsibility for the overall operation of the  
882 facility, a new authorization satisfying the requirements of Part II H 2 shall be submitted to  
883 the department prior to or together with any reports or information to be signed by an  
884 authorized representative.

885 4. Certification. Any person signing a document under Part II H 1 or 2 shall make the  
886 following certification: "I certify under penalty of law that this document and all attachments  
887 were prepared under my direction or supervision in accordance with a system designed  
888 to ensure that qualified personnel properly gather and evaluate the information submitted.  
889 Based on my inquiry of the person or persons who manage the system or those persons  
890 directly responsible for gathering the information, the information submitted is, to the best  
891 of my knowledge and belief, true, accurate, and complete. I am aware that there are  
892 significant penalties for submitting false information, including the possibility of fine and  
893 imprisonment for knowing violations."

894 I. Adverse impact Duty to comply. The permittee shall take comply with all feasible steps to  
895 minimize any adverse impact to state waters resulting from noncompliance with any limitation or  
896 limitations or conditions specified in of this general permit, and shall perform and report such  
897 accelerated or additional monitoring as is necessary to determine the nature and impact of the  
898 noncomplying limitation or limitations or conditions this chapter. Any noncompliance with this  
899 general permit or this chapter constitutes a violation of the State Water Control Law. General  
900 permit noncompliance is grounds for enforcement action; for permit termination, revocation and  
901 reissuance, or modification; or for denial of a permit renewal application. Compliance with this  
902 general permit during its term constitutes compliance for purposes of enforcement with the State  
903 Water Control Law.

904 J. Duty to halt, reduce activity or to mitigate reapply.

905 1. It shall not be a defense for a permittee in an enforcement action that it would have  
906 been necessary to halt or reduce the permitted activity in order to maintain compliance  
907 with the conditions of this permit.

908 2. The permittee shall take all reasonable steps to minimize, correct or prevent any  
909 discharge in violation of this permit which has a reasonable likelihood of adversely  
910 affecting human health or the environment.

911 If the permittee wishes to continue an activity regulated by this general permit after the  
912 expiration date of this general permit, the permittee shall apply for and obtain a new permit. All  
913 permittees with a currently effective general permit shall submit a new application before the  
914 expiration date of the existing general permit unless permission for a later date has been granted  
915 by the board. The board shall not grant permission for applications to be submitted later than the  
916 expiration date of the existing general permit.

917 K. Structural stability Bypass. The structural stability of any of the units or parts of the facilities  
918 herein permitted is the sole responsibility of the permittee and the failure of such structural units

919 ~~or parts shall not relieve the permittee of the responsibility of complying with all terms and~~  
920 ~~conditions of this permit.~~

921 1. Prohibition. "Bypass" means intentional diversion of waste streams from any portion of  
922 a treatment works. A bypass of the treatment works is prohibited except as provided in  
923 this subsection.

924 2. Anticipated bypass. If the permittee knows in advance of the need for a bypass, the  
925 permittee shall notify the department promptly at least 10 days prior to the bypass. After  
926 considering its adverse effects, the department may approve an anticipated bypass if:

927 a. The bypass will be unavoidable to prevent loss of human life, personal injury, or  
928 severe property damage. "Severe property damage" means substantial physical  
929 damage to property, damage to the treatment works that causes them to become  
930 inoperable, or substantial and permanent loss of natural resources that can reasonably  
931 be expected to occur in the absence of a bypass. "Severe property damage" does not  
932 mean economic loss caused by delays in production; and

933 b. There are no feasible alternatives to bypass such as the use of auxiliary treatment  
934 works, retention of untreated waste, or maintenance during normal periods of  
935 equipment downtime. However, if bypass occurs during normal periods of equipment  
936 downtime or preventive maintenance and in the exercise of reasonable engineering  
937 judgment the permittee could have installed adequate backup equipment to prevent  
938 such bypass, this exclusion shall not apply as a defense.

939 3. Unplanned bypass. If an unplanned bypass occurs, the permittee shall notify the  
940 department as soon as possible, but in no case later than 24 hours, and shall take steps  
941 to halt the bypass as early as possible. This notification will be a condition for defense to  
942 an enforcement action that an unplanned bypass met the conditions in Part II K 2 a and b  
943 and in light of the information reasonably available to the permittee at the time of the  
944 bypass.

945 ~~L. Compliance with state law Upset. Compliance with this permit during its term constitutes~~  
946 ~~compliance with the State Water Control Law. Nothing in this permit shall be construed to preclude~~  
947 ~~the institution of any legal action under, or relieve the permittee from any responsibilities, liabilities,~~  
948 ~~or penalties established pursuant to any other state law or regulation. A permittee may claim an~~  
949 ~~upset as an affirmative defense to an action brought for noncompliance. In any enforcement~~  
950 ~~proceedings a permittee shall have the burden of proof to establish the occurrence of any upset.~~  
951 ~~In order to establish an affirmative defense of upset, the permittee shall present properly signed,~~  
952 ~~contemporaneous operating logs or other relevant evidence that shows:~~

953 1. That an upset occurred and that the cause can be identified;

954 2. That the permitted facility was at the time being operated efficiently and in  
955 compliance with proper operation and maintenance procedures;

956 3. That the 24-hour reporting requirements to the department were met; and

957 4. That the permittee took all reasonable steps to minimize or correct any adverse  
958 impact on state waters resulting from noncompliance with the permit.

959 ~~M. Property rights Inspection and entry. The issuance of this permit does not convey any~~  
960 ~~property rights in either real or personal property, or any exclusive privileges, nor does it authorize~~  
961 ~~any injury to private property or any invasion of personal rights, nor any infringement of federal,~~  
962 ~~state, or local laws or regulations. Upon presentation of credentials, any duly authorized agent of~~  
963 ~~the department may, at reasonable times and under reasonable circumstances:~~

- 964 1. Enter upon any public or private property on which the pollutant management  
965 activities that are governed by this general permit are located and have access to  
966 records required by this general permit;
- 967 2. Have access to, inspect, and copy any records that must be kept as part of the  
968 conditions in this general permit;
- 969 3. Inspect any facility's equipment (including monitoring and control equipment)  
970 practices or operations regulated or required under this general permit; and
- 971 4. Sample or monitor any substances or parameters at any locations for the purpose  
972 of assuring general permit compliance or as otherwise authorized by the State Water  
973 Control Law.

974 N. Severability Effect of a permit. ~~The provisions of this permit are severable. This general~~  
975 ~~permit neither conveys any property rights in either real or personal property or any exclusive~~  
976 ~~privileges nor authorizes any injury to private property or invasion of personal rights or any~~  
977 ~~infringement of federal, state, or local law or regulations.~~

978 O. Duty to reregister State law. ~~If the permittee wishes to continue to operate under a general~~  
979 ~~permit after the expiration date of this permit, the permittee must submit a new registration~~  
980 ~~statement at least 30 days prior to the expiration date of this permit. Nothing in this general permit~~  
981 ~~shall be construed to preclude the institution of any legal action under or relieve the permittee~~  
982 ~~from any responsibilities, liabilities, or penalties established pursuant to any other state law or~~  
983 ~~regulation or under authority preserved by § 510 of the federal Clean Water Act. Except as~~  
984 ~~provided in general permit conditions on bypassing in Part II K and upset in Part II L, nothing in~~  
985 ~~this general permit shall be construed to relieve the permittee from civil and criminal penalties for~~  
986 ~~noncompliance.~~

987 P. Right of entry Oil and hazardous substance liability. ~~The permittee shall allow, or secure~~  
988 ~~necessary authority to allow, authorized state representatives, upon the presentation of~~  
989 ~~credentials:~~

- 990 ~~1. To enter upon the permittee's premises on which the establishment, treatment works,~~  
991 ~~pollutant management activities, or discharge or discharges is located or in which any~~  
992 ~~records are required to be kept under the terms and conditions of this permit;~~
- 993 ~~2. To have access to inspect and copy at reasonable times any records required to be~~  
994 ~~kept under the terms and conditions of this permit;~~
- 995 ~~3. To inspect at reasonable times any monitoring equipment or monitoring method~~  
996 ~~required in this permit;~~
- 997 ~~4. To sample at reasonable times any waste stream, process stream, raw material or by-~~  
998 ~~product; and~~
- 999 ~~5. To inspect at reasonable times any collection, treatment, or pollutant management~~  
1000 ~~activities required under this permit. For purposes of this section, the time for inspection~~  
1001 ~~shall be deemed reasonable during regular business hours, and whenever the facility is~~  
1002 ~~discharging or involved in managing pollutants. Nothing contained here shall make an~~  
1003 ~~inspection time unreasonable during an emergency.~~

1004 Nothing in this general permit shall be construed to preclude the institution of any legal action  
1005 or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is  
1006 or may be subject under §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

1007 Q. Transferability of permits Duty to mitigate. ~~Coverage under this permit may be transferred~~  
1008 ~~to a new owner by a permittee if:~~

- 1009 1. The current permittee notifies the department 30 days in advance of the proposed  
1010 transfer of the title to the facility or property;
- 1011 2. The notice to the department includes a written agreement between the existing and  
1012 proposed new permittee containing a specific date of transfer of permit responsibility,  
1013 coverage and liability between them; and
- 1014 3. The department does not within the 30-day time period notify the existing permittee and  
1015 the proposed permittee of the board's intent to transfer coverage under the permit. Such  
1016 transferred coverage under this permit shall, as of the date of the transfer, be fully  
1017 effective.

1018 The permittee shall take all reasonable steps to minimize or prevent any pollutant  
1019 management activity in violation of this general permit that has a reasonable likelihood of  
1020 adversely affecting human health or the environment.

1021 R. Permit modification Need to halt or reduce activity not a defense. The permit may be  
1022 modified when a change is made in the promulgated standards or regulations on which the permit  
1023 was based. It shall not be a defense for a permittee in an enforcement action that it would have  
1024 been necessary to halt or reduce the permitted activity in order to maintain compliance with the  
1025 conditions of this general permit.

1026 S. Permit termination action. After public notice and opportunity for a hearing, coverage under  
1027 the general permit may be terminated for cause. Permits may be modified, revoked and reissued,  
1028 or terminated for cause upon the request of the permittee or interested persons or upon the  
1029 department's initiative. If a permittee files a request for a general permit modification, revocation,  
1030 or termination or files a notification of planned changes or anticipated noncompliance, the general  
1031 permit terms and conditions shall remain effective until the request is acted upon by the  
1032 department. This provision shall not be used to extend the expiration date of the effective general  
1033 permit.

1034 T. When an individual VPA permit may be required. The director may require any permittee  
1035 authorized to manage pollutants covered under this general permit to apply for and obtain an  
1036 individual VPA permit. Cases where an individual VPA permit may be required include, ~~but are~~  
1037 ~~not limited to,~~ the following:

- 1038 1. The pollutant management activities violate the terms or conditions of this general  
1039 permit;
- 1040 2. When additions or alterations have been made to the affected facility that require the  
1041 application of permit conditions that differ from those of the existing general permit or are  
1042 absent from it; and
- 1043 3. When new information becomes available about the operation or pollutant management  
1044 activities covered under this general permit that was not available at the time of general  
1045 permit coverage.

1046 Coverage under this general permit may be terminated as to an individual permittee for any  
1047 of the reasons set forth above after appropriate notice and an opportunity for a hearing.

1048 U. When an individual VPA permit may be requested. Any permittee operating under this  
1049 general permit may request to be excluded from the coverage under this general permit by  
1050 applying for an individual VPA permit. When an individual VPA permit is issued to a permittee the  
1051 applicability of this general permit to the individual permittee is automatically terminated on the  
1052 effective date of the individual VPA permit.

1053 V. ~~Civil and criminal liability~~ Transfer of coverage under this general permit. Nothing in this  
1054 permit shall be construed to relieve the permittee from civil and criminal penalties for  
1055 noncompliance with the terms of this permit.

1056 1. Permits are not transferable to any person except after notice to the department. The  
1057 department may require modification or revocation and reissuance of this general permit  
1058 to change the name of the permittee and to incorporate such other requirements as may  
1059 be necessary. Except as provided in Part II V 2, coverage under this general permit may  
1060 be transferred by the permittee to a new owner or operator only if the general permit has  
1061 been modified to reflect the transfer or has been revoked and reissued to the new owner  
1062 or operator.

1063 2. As an alternative to transfers under Part II V 1, coverage under this general permit shall  
1064 be automatically transferred to a new permittee if:

1065 a. The current permittee notifies the department within 30 days of the transfer of the  
1066 title to the facility or property;

1067 b. The notice includes a written agreement between the existing and new permittees  
1068 containing a specific date for transfer of general permit responsibility, coverage, and  
1069 liability between them; and

1070 c. The department does not within the 30-day time period, notify the existing permittee  
1071 and the proposed new permittee of its intent to modify or revoke and reissue the  
1072 coverage under this general permit. If the department notice is not received, the  
1073 transfer is effective on the date specified in the agreement mentioned in Part II V 2 b.

1074 W. ~~Oil and hazardous substance liability~~ Severability. Nothing in this permit shall be construed  
1075 to preclude the institution of any legal action or relieve the permittee from any responsibilities,  
1076 liabilities, or penalties to which the permittee is or may be subject under § 311 of the Clean Water  
1077 Act or §§ 62.1-44.34:14 through 62.1-44.34:23 of the Code of Virginia.

1078 X. ~~Unauthorized discharge of pollutants.~~ Except in compliance with this permit, it shall be  
1079 unlawful for any permittee to:

1080 ~~1. Discharge into state waters sewage, industrial wastes, other wastes or any noxious or~~  
1081 ~~deleterious substances; or~~

1082 ~~2. Otherwise alter the physical, chemical or biological properties of such state waters and~~  
1083 ~~make them detrimental to the public health, or to animal or aquatic life, or to the uses of~~  
1084 ~~such waters for domestic or industrial consumption, or for recreation, or for other uses.~~

1085 The provisions of this general permit are severable, and if any provision of this permit or the  
1086 application of any provision of this general permit to any circumstance is held invalid, the  
1087 application of such provision to other circumstances and the remainder of this general permit shall  
1088 not be affected thereby.

1089 Part III  
1090 Pollutant Management and Monitoring Requirements for Animal Waste End-Users

1091 A. Pollutant management and monitoring requirements.

1092 1. During the period beginning with the this general permit's effective date and lasting until  
1093 the this general permit's expiration date, the permittee is authorized to manage pollutants  
1094 at the location or locations identified in the registration statement and the facility's  
1095 approved nutrient management plan written for the animal waste end-user.

1096 2. At earthen liquid waste storage facilities constructed after December 1, 1998, to an  
 1097 elevation below the seasonal high water table or within one foot thereof, groundwater  
 1098 monitoring wells shall be installed. A minimum of one up gradient and one down gradient  
 1099 well shall be installed at each earthen waste storage facility that requires groundwater  
 1100 monitoring. Existing wells may be utilized to meet this requirement if properly located and  
 1101 constructed.

1102 3. All facilities animal waste end-users previously covered under a general permit,  
 1103 individual VPA permit, or a VPDES permit that required groundwater monitoring shall  
 1104 continue monitoring consistent with the requirements listed ~~below~~ in this part regardless  
 1105 of where ~~they~~ the animal waste end-users are located relative to the seasonal high water  
 1106 table.

1107 4. ~~At facilities where~~ Where groundwater monitoring is required, the following conditions  
 1108 apply:

1109 a. One data set shall be collected from each well prior to any waste being placed in  
 1110 the storage facility.

1111 b. The static water level shall be measured prior to bailing well water for sampling.

1112 c. At least three well volumes of groundwater shall be withdrawn immediately prior to  
 1113 sampling each monitoring well.

1114 5. In accordance with subdivisions 2 and 3 of this subsection, the groundwater shall be  
 1115 monitored by the permittee at the monitoring wells as specified ~~below~~ in Table 1 of Part  
 1116 III. Additional groundwater monitoring may be required in the ~~facility's~~ approved nutrient  
 1117 management plan written for the animal waste end-user.

1118 6. If groundwater monitoring results for any monitored parameter demonstrate potential  
 1119 noncompliance with this general permit related to the waste storage facility, then the  
 1120 permittee shall submit an approvable groundwater monitoring action plan that outlines  
 1121 appropriate measures to be taken to address the noncompliance. The groundwater  
 1122 monitoring action plan shall be submitted to the department within 30 days of obtaining  
 1123 the monitoring results.

1124 7. The analysis of the groundwater samples for ammonia nitrogen and nitrate nitrogen  
 1125 shall be performed by a laboratory accredited under the Virginia Environmental Laboratory  
 1126 Accreditation Program (VELAP) in accordance with 1VAC30-46-20. Field sampling,  
 1127 testing, and measurement of the static water level, pH, and conductivity where the sample  
 1128 is taken are not subject to the VELAP requirement.

TABLE 1  
 GROUNDWATER MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Static Water Level	NL	Ft	1/3 years	Measured
Ammonia Nitrogen	NL	mg/L	1/3 years	Grab
Nitrate Nitrogen	NL	mg/L	1/3 years	Grab
pH	NL	SU	1/3 years	Grab

Conductivity	NL	<del>umhos/cm</del> umhos/cm	1/3 years	Grab
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NL = No limit, this is a monitoring requirement only.

1129 ~~6. 8.~~ Soil at the land application sites shall be monitored as specified below in Table 2 of  
 1130 Part III. Additional soils monitoring may be required in the facility's approved nutrient  
 1131 management plan written for the animal waste end-user.

**TABLE 2**  
SOILS MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
pH	NL	SU	1/3 years	Composite
Phosphorus	NL	ppm or lbs/ac	1/3 years	Composite
Potash	NL	ppm or lbs/ac	1/3 years	Composite
Calcium	NL	ppm or lbs/ac	1/3 years	Composite
Magnesium	NL	ppm or lbs/ac	1/3 years	Composite

NL = No limit, this is a monitoring requirement only.

SU = Standard Units

1132 ~~7. 9.~~ Soil monitoring shall be conducted at a depth of between 0-6 inches, unless otherwise  
 1133 specified in the facility's approved nutrient management plan written for the animal waste  
 1134 end-user.

1135 ~~8. 10.~~ Waste shall be monitored as specified below in Table 3 of Part III. Additional waste  
 1136 monitoring may be required in the facility's approved nutrient management plan written for  
 1137 the animal waste end-user.

**TABLE 3**  
WASTE MONITORING

PARAMETERS	LIMITATIONS	UNITS	MONITORING REQUIREMENTS	
			Frequency	Sample Type
Total Kjeldahl Nitrogen	NL	*	1/year	Composite
Ammonia Nitrogen	NL	*	1/year	Composite
Total Phosphorus	NL	*	1/year	Composite
Total Potassium	NL	*	1/year	Composite
Calcium	NL	*	1/year	Composite
Magnesium	NL	*	1/year	Composite
Moisture Content	NL	%	1/year	Composite

NL = No limit, this is a monitoring requirement only.

\*Parameters for waste may be reported as a percent, as lbs/ton or lbs/1000 gallons, or as ppm where appropriate.

1138 9. 11. Analysis of soil and waste shall be according to methods specified in the ~~facility's~~  
1139 approved nutrient management plan written for the animal waste end-user.

1140 ~~10.~~ 12. All monitoring data collected as required by this section and any additional  
1141 monitoring shall be maintained on site for a period of five years and shall be made  
1142 available to department personnel upon request.

1143 B. ~~Other~~ Site design, storage, and operation requirements ~~or special conditions.~~

1144 1. Any liquid manure collection and storage facility shall be designed and operated to (i)  
1145 prevent point source discharges of pollutants to state waters except in the case of a storm  
1146 event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage  
1147 capacity to accommodate periods when the ground is frozen or saturated, periods when  
1148 land application of nutrients should not occur due to limited or nonexistent crop nutrient  
1149 uptake, and periods when physical limitations prohibit the land application of waste.

1150 2. Waste storage facilities constructed after December 1, 1998, shall not be located on a  
1151 100-year floodplain. For the purposes of determining the 100-year floodplain, a Federal  
1152 Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA  
1153 Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be  
1154 used.

1155 3. Earthen waste storage facilities constructed after December 1, 1998, shall include a  
1156 properly designed and installed liner. Such liner shall be either a synthetic liner of at least  
1157 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum  
1158 permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer or  
1159 an employee of the Natural Resources Conservation Service of the U.S. Department of  
1160 Agriculture with appropriate engineering approval authority shall certify that the siting,  
1161 design, and construction of the waste storage facility comply with the requirements of this  
1162 general permit. This certification shall be maintained on site.

1163 4. At earthen waste storage facilities constructed below the seasonal high water table, the  
1164 top surface of the waste must be maintained at a level of at least two feet above the water  
1165 table.

1166 5. All liquid waste storage ~~or treatment~~ facilities shall maintain at least one foot of freeboard  
1167 at all times, up to and including a 25-year, 24-hour storm.

1168 6. For new waste storage ~~or treatment~~ facilities constructed after November 16, 2014, the  
1169 facilities shall be constructed, operated, and maintained in accordance with the applicable  
1170 practice standard adopted by the Natural Resources Conservation Service of the U.S.  
1171 Department of Agriculture and approved by the department. A Virginia licensed  
1172 professional engineer or an employee of the Natural Resources Conservation Service of  
1173 the U.S. Department of Agriculture with appropriate engineering approval authority shall  
1174 certify that the siting, design, and construction of the waste storage facility comply with the  
1175 requirements of this general permit. This certification shall be maintained on site.

1176 7. The permittee shall notify the department's regional office at least 14 days prior to (i)  
1177 animals being initially placed ~~in the confined facility~~ into confinement or (ii) the utilization  
1178 of any new waste storage ~~or treatment~~ facilities.

1179 8. Semi-solid and solid waste shall be stored in a manner that prevents contact with  
1180 surface water and groundwater. Waste that is stockpiled outside for more than 14 days

1181 shall be kept in a waste storage facility or at a site that provides adequate storage.  
1182 Adequate storage shall, at a minimum, include the following:

1183 a. Waste shall be covered to protect it from precipitation and wind;

1184 b. Stormwater shall not run onto or under the stored waste;

1185 c. A minimum of two feet separation distance to the seasonal high water table or an  
1186 impermeable barrier shall be used under the stored waste. All waste storage facilities  
1187 that use an impermeable barrier shall maintain a minimum of one foot separation  
1188 between the seasonal high water table and the impermeable barrier. "~~Seasonal high~~  
1189 ~~water table~~" means ~~that portion of the soil profile where a color change has occurred~~  
1190 ~~in the soil as a result of saturated soil conditions or where soil concretions have~~  
1191 ~~formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at~~  
1192 ~~which these conditions first occur is termed the seasonal high water table.~~  
1193 Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at  
1194 least four inches of reinforced concrete, or another material of similar structural  
1195 integrity that has a minimum permeability rating of 0.0014 inches per hour ( $1 \times 10^{-6}$   
1196 centimeters per second); and

1197 d. For waste that is not stored in a waste storage facility or under roof, the storage site  
1198 must be at least 100 feet from any surface water, intermittent drainage, wells,  
1199 sinkholes, rock outcrops, and springs. For semi-solid and solid waste that is stored on  
1200 an impermeable barrier and where any stormwater runoff is collected in the waste  
1201 storage facility, the semi-solid and solid waste can be stored adjacent to the waste  
1202 storage facility regardless of the location of the waste storage facility so long as any  
1203 surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs are  
1204 protected from runoff from the stored semi-solid and solid waste.

1205 Semi-solid and solid waste that is stored on an impermeable barrier and where any  
1206 stormwater runoff is collected in a waste storage facility is considered adequate storage  
1207 and is therefore not required to be covered.

1208 9. All equipment needed for ~~the proper operation of the permitted facilities~~ shall be  
1209 maintained in good working order. The manufacturer's operating and maintenance  
1210 manuals shall be retained for references to allow for timely maintenance and prompt repair  
1211 of equipment when appropriate. The permittee shall periodically inspect for leaks on  
1212 equipment used for land application of waste.

1213 10. All treated wastes generated by a digester or other manure treatment technologies  
1214 shall be approved by the department and shall be managed by a ~~facility~~ the animal waste  
1215 end-user covered under this general permit and in accordance with the following  
1216 conditions:

1217 a. All treated wastes generated by a digester or other manure treatment technologies  
1218 must be managed through an approved nutrient management plan or transferred to  
1219 another entity in accordance with animal waste transfer requirements in Part III ~~B-15~~  
1220 C 6 and 46 7.

1221 b. When a ~~facility~~ animal waste end-user covered under this general permit generates  
1222 a treated waste from animal waste and other feedstock, the permittee shall maintain  
1223 records related to the production of the treated waste.

1224 (1) If off-site wastes are added to generate the treated waste, then the permittee shall  
1225 record the following items:

1226 (a) The amount of waste brought to the ~~facility~~ animal waste end-user; and

- 1227 (b) From whom and where the waste originated.
- 1228 (2) For all treated wastes generated by the facility animal waste end-user, the  
1229 permittee shall record the following items:
- 1230 (a) The amount of treated waste generated;
- 1231 (b) The nutrient analysis of the treated waste; and
- 1232 (c) The final use of the treated waste.
- 1233 (3) Permittees shall maintain the records required by Part III B 10 b (1) and (2) on site  
1234 for a period of three years. All records shall be made available to department personnel  
1235 upon request.

1236 11. When the waste storage facility is no longer needed, the permittee shall close it in a  
1237 manner that (i) minimizes the need for further maintenance and (ii) controls, minimizes, or  
1238 eliminates, to the extent necessary to protect human health and the environment, the  
1239 postclosure escape of uncontrolled leachate, surface runoff, or waste decomposition  
1240 products to the groundwater, surface water, or the atmosphere. Prior to closure, the  
1241 permittee shall notify the department of any plans to close a liquid waste storage facility.  
1242 At closure, the permittee shall remove all waste residue from the animal waste storage  
1243 facility. Removed waste materials shall be utilized according to the approved NMP.

1244 C. Animal waste use and transfer requirements.

1245 1. Animal waste generated by this facility an animal waste end-user that is subject to this  
1246 general permit shall not be applied to fields owned by or under the operational control of  
1247 either the permittee or a legal entity in which the permittee has an ownership interest  
1248 unless the fields are included in the facility's approved nutrient management plan written  
1249 for this animal waste end-user.

1250 ~~12. 2.~~ The permittee shall implement a nutrient management plan (NMP) developed by a  
1251 certified nutrient management planner in accordance with § 10.1-104.2 of the Code of  
1252 Virginia and approved by the Department of Conservation and Recreation and maintain  
1253 the plan on site. ~~[ All Within 30 days of the approval by the Department of Conservation~~  
1254 ~~and Recreation, all ] revised [ and Department of Conservation and Recreation~~  
1255 ~~approved ] NMPs shall be submitted to the department [ prior to the expiration of the~~  
1256 ~~previous NMP ] . The NMP shall address the form, source, amount, timing, and method of~~  
1257 application of nutrients on each field to achieve realistic production goals, while minimizing  
1258 nitrogen and phosphorus loss to ~~ground~~ groundwaters and surface waters. The terms of  
1259 the NMP shall be enforceable through this general permit. The NMP shall contain at a  
1260 minimum the following information:

- 1261 a. Site map indicating the location of the waste storage facilities and the fields where  
1262 waste will be applied;
- 1263 b. Site evaluation and assessment of soil types and potential productivities;
- 1264 c. Nutrient management sampling including soil and waste monitoring;
- 1265 d. Storage and land area requirements;
- 1266 e. Calculation of waste application rates; and
- 1267 f. Waste application schedules.

1268 ~~13. 3.~~ Waste shall not be land applied within buffer zones. Buffer zones at waste  
1269 application sites shall, at a minimum, be maintained as follows:

- 1270 a. Distance from occupied dwellings not on the permittee's property: 200 feet (unless  
1271 the occupant of the dwelling signs a waiver of the buffer zone);
- 1272 b. Distance from water supply wells or springs: 100 feet;
- 1273 c. Distance from surface water courses: 100 feet (without a ~~permanent~~ vegetated  
1274 buffer) or 35 feet (if a ~~permanent~~ vegetated buffer exists). Other site-specific  
1275 conservation practices may be approved by the department that will provide pollutant  
1276 reductions equivalent or better than the reductions that would be achieved by the 100-  
1277 foot buffer or 35-foot wide vegetated buffer;
- 1278 d. Distance from rock outcropping (except limestone): 25 feet;
- 1279 e. Distance from limestone outcroppings: 50 feet; and
- 1280 f. Waste shall not be applied in such a manner that it would discharge to sinkholes that  
1281 may exist in the area.

1282 ~~14.~~ 4. The following land application records shall be maintained:

- 1283 a. The identification of the land application field sites where the waste is utilized or  
1284 stored;
- 1285 b. The application rate;
- 1286 c. The application dates; and
- 1287 d. What crops have been planted.

1288 These records shall be maintained on site for a period of five years after the date the  
1289 application is made and shall be made available to department personnel upon request.

1290 ~~15.~~ 5. In cases where a waste storage facility is threatened by emergencies such as fire  
1291 or flood or where these conditions are imminent, animal waste can be land applied outside  
1292 of the spreading schedule outlined in the NMP written for the animal waste end-user. If  
1293 this occurs, then the animal waste end-user shall document the land application  
1294 information in accordance with Part III C 4 and notify the department in accordance with  
1295 Part II F 3.

1296 6. Animal waste generated by this facility an animal waste end-user that is subject to this  
1297 general permit may be transferred from the permittee to another person, if one or more of  
1298 the following conditions are met:

1299 a. Animal waste generated by this facility an animal waste end-user that is subject to  
1300 this general permit may be transferred off-site for land application or another  
1301 acceptable use approved by the department, if:

1302 (1) The sites where the animal waste will be utilized are included in ~~this permitted~~  
1303 facility's the animal waste end-user's approved nutrient management plan; or

1304 (2) The sites where the animal waste will be utilized are included in another permitted  
1305 facility's entity's approved nutrient management plan.

1306 b. Animal waste generated by this facility an animal waste end-user that is subject to  
1307 this general permit may be transferred off-site without identifying in the permittee's  
1308 approved nutrient management plan the fields where such waste will be utilized, if the  
1309 following conditions are met:

1310 (1) The animal waste is registered with the Virginia Department of Agriculture and  
1311 Consumer Services in accordance with regulations adopted pursuant to ~~subdivision A~~  
1312 ~~2 of~~ § 3.2-3607 A 2 of the Code of Virginia; or

1313 (2) When the permittee transfers to another person more than 10 tons of solid or semi-  
1314 solid animal waste (solid or semi-solid animal waste contains less than 85% moisture)  
1315 or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85%  
1316 or more moisture) in any 365-day period, the permittee shall maintain records in  
1317 accordance with Part III ~~B-16~~ C 7.

1318 ~~46. 7.~~ Animal waste may be transferred from a permittee to another person without  
1319 identifying the fields where such waste will be utilized in the permittee's approved nutrient  
1320 management plan if the following conditions are met:

1321 a. When a permittee transfers to another person more than 10 tons of solid or semi-  
1322 solid animal waste (solid or semi-solid animal waste contains less than 85% moisture)  
1323 or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85%  
1324 or more moisture) in any 365-day period, the permittee shall provide that person with:

1325 (1) Permittee's name, address, and the general permit number;

1326 (2) A copy of the most recent nutrient analysis of the animal waste; and

1327 (3) An animal waste fact sheet.

1328 b. When a permittee transfers to another person more than 10 tons of solid or semi-  
1329 solid animal waste (solid or semi-solid animal waste contains less than 85% moisture)  
1330 or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85%  
1331 or more moisture) in any 365-day period, the permittee shall keep a record of the  
1332 following:

1333 (1) ~~The recipient~~ recipient's name and address;

1334 (2) The amount of animal waste received by the person;

1335 (3) The date of the transaction;

1336 (4) The nutrient analysis of the animal waste;

1337 (5) The locality in which the recipient intends to utilize the animal waste (i.e., nearest  
1338 town or city and zip code);

1339 (6) The name of the stream or waterbody, if known, to the recipient that is nearest to  
1340 the animal waste utilization or storage site; and

1341 (7) The signed waste transfer records form acknowledging the receipt of the following:

1342 (a) The animal waste;

1343 (b) The nutrient analysis of the animal waste; and

1344 (c) An animal waste fact sheet.

1345 c. Permittees shall maintain the records required by Part III ~~B-16~~ C 7 a and b for at  
1346 least three years after the date of the transaction and shall make them available to  
1347 department personnel upon request.

1348 ~~17. When the waste storage or treatment facility is no longer needed, the permittee shall~~  
1349 ~~close it in a manner that (i) minimizes the need for further maintenance and (ii) controls,~~  
1350 ~~minimizes, or eliminates, to the extent necessary to protect human health and the~~  
1351 ~~environment, the postclosure escape of uncontrolled leachate, surface runoff, or waste~~

1352 decomposition products to the groundwater, surface water, or the atmosphere. At closure,  
1353 the permittee shall remove all waste residue from the animal waste storage or treatment  
1354 facility. Removed waste materials shall be utilized according to the approved NMP.

1355 18. As required by § 62.1-44.17:1 F of the Code of Virginia, each D. Each permittee covered  
1356 under this general permit shall have completed the training program offered or approved by the  
1357 department in the two years prior to submitting the registration statement for general permit  
1358 coverage or shall complete such training within one year after the registration statement has been  
1359 submitted for general permit coverage. All permittees shall complete the training program at least  
1360 once every three years.

1361 **9VAC25-192-80. Tracking and accounting requirements for animal waste end-users.**

1362 A. When an animal waste end-user is the recipient of more than 10 tons of solid or semi-solid  
1363 animal waste (solid or semi-solid animal waste contains less than 85% moisture) or more than  
1364 6,000 gallons of liquid animal waste (liquid animal waste contains 85% percent or more moisture)  
1365 in any 365-day period from an owner or operator of an animal feeding operation covered by a  
1366 general permit, an individual VPA permit, or a VPDES permit, the end-user shall maintain records  
1367 regarding the transfer and land application of animal waste.

- 1368 1. The animal waste end-user shall provide the permittee with the following items:
- 1369 a. ~~End-user~~ End-user's name and address;
- 1370 b. The locality in which the end-user intends to utilize the waste (i.e., nearest town or  
1371 city and zip code);
- 1372 c. The name of the stream or waterbody, if known, to the end-user that is nearest to  
1373 the waste utilization or storage site; and
- 1374 d. Written ~~acknowledgement~~ acknowledgment of receipt of:
- 1375 (1) The waste;
- 1376 (2) The nutrient analysis of the waste; and
- 1377 (3) An animal waste fact sheet.
- 1378 2. The animal waste end-user shall record the following items regarding the waste transfer:
- 1379 a. The ~~source~~ source's name, address, and permit number (if applicable);
- 1380 b. The amount of animal waste that was received;
- 1381 c. The date of the transaction;
- 1382 d. The final use of the animal waste;
- 1383 e. The locality in which the waste was utilized (i.e., nearest town or city and zip code);  
1384 and
- 1385 f. The name of the stream or waterbody, if known, to the recipient that is nearest to the  
1386 waste utilization or storage site.

1387 Records regarding animal waste transfers shall be maintained on site for a period of three  
1388 years after the date of the transaction. All records shall be made available to department  
1389 personnel upon request.

1390 3. If waste is land applied, then the animal waste end-user shall keep a record of the  
1391 following items regarding the land application of the waste:

- 1392 a. The nutrient analysis of the waste;

- 1393 b. Maps indicating the animal waste land application fields and storage sites;
- 1394 c. The land application rate;
- 1395 d. The land application dates;
- 1396 e. What crops were planted;
- 1397 f. Soil test results, if obtained;
- 1398 g. NMP, if applicable; and
- 1399 h. The method used to determine the land application rates (i.e., phosphorus crop
- 1400 removal, waste nutrient analysis rate, soil test recommendations, or a nutrient
- 1401 management plan).

1402 Records regarding land application of animal waste shall be maintained on site for a period  
 1403 of three years after the date the application is made. All records shall be made available  
 1404 to department personnel upon request.

1405 B. Any duly authorized agent of the ~~board~~ department may, at reasonable times and under  
 1406 reasonable circumstances, enter any establishment or upon any property, public or private, for  
 1407 the purpose of obtaining information or conducting surveys or investigations necessary in the  
 1408 enforcement of the provisions of this regulation.

1409 **9VAC25-192-90. ~~Utilization and storage~~ Storage and land application requirements for**  
 1410 **transferred animal waste.**

1411 A. An animal waste end-user who receives animal waste from an owner or operator of an  
 1412 animal feeding operation covered by a general permit, an individual VPA permit, or a VPDES  
 1413 permit shall comply with the requirements outlined in this section.

1414 B. Storage requirements. An animal waste end-user who receives animal waste from an  
 1415 owner or operator of an animal feeding operation covered by a general permit, an individual VPA  
 1416 permit, or a VPDES permit shall comply with the requirements outlined in this subsection  
 1417 regarding storage of animal waste in his the owner or operator's possession or under his the  
 1418 owner or operator's control.

1419 1. ~~Animal~~ Semi-solid and solid waste shall be stored in a manner that prevents contact  
 1420 with surface water and groundwater. ~~Animal~~ Semi-solid and solid waste that is stockpiled  
 1421 outside for more than 14 days shall be kept in a waste storage facility or at a site that  
 1422 provides adequate storage. Adequate storage shall, at a minimum, include the following:

1423 a. ~~Animal~~ Semi-solid and solid waste shall be covered to protect it from precipitation  
 1424 and wind;

1425 b. Stormwater shall not run onto or under the stored ~~animal~~ semi-solid and solid waste;

1426 c. A minimum of two feet separation distance to the seasonal high water table or an  
 1427 impermeable barrier shall be used under the stored waste. All waste storage facilities  
 1428 that use an impermeable barrier shall maintain a minimum of one foot separation  
 1429 between the seasonal high water table and the impermeable barrier. "~~Seasonal high~~  
 1430 ~~water table~~" means that portion of the soil profile where a color change has occurred  
 1431 in the soil as a result of saturated soil conditions or where soil concretions have  
 1432 formed. Typical colors are gray mottlings, solid gray, or black. The depth in the soil at  
 1433 which these conditions first occur is termed the seasonal high water table.  
 1434 Impermeable barriers shall be constructed of at least 12 inches of compacted clay, at  
 1435 least four inches of reinforced concrete, or another material of similar structural

1436 integrity that has a minimum permeability rating of 0.0014 inches per hour (1X10<sup>-6</sup>  
1437 centimeters per second); and

1438 d. For ~~animal~~ semi-solid and solid waste that is not stored in a waste storage facility  
1439 or under roof, the storage site must be at least 100 feet from any surface water,  
1440 intermittent drainage, wells, sinkholes, rock outcrops, and springs. For semi-solid and  
1441 solid waste that is stored on an impermeable barrier and where any stormwater runoff  
1442 is collected in the waste storage facility, the semi-solid and solid waste can be stored  
1443 adjacent to the waste storage facility regardless of the location of the waste storage  
1444 facility so long as surface water, intermittent drainage, wells, sinkholes, rock outcrops,  
1445 and springs are protected from runoff from the stored semi-solid and solid waste.

1446 Semi-solid and solid waste that is stored on an impermeable barrier and where any  
1447 stormwater runoff is collected in a waste storage facility is considered adequate storage  
1448 and is therefore not required to be covered.

1449 2. Any liquid animal waste collection and storage facility shall be designed and operated  
1450 to (i) prevent point source discharges of pollutants to state waters except in the case of a  
1451 storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste  
1452 storage capacity to accommodate periods when the ground is frozen or saturated, periods  
1453 when land application of nutrients should not occur due to limited or nonexistent crop  
1454 nutrient uptake, and periods when physical limitations prohibit the land application of  
1455 waste.

1456 3. Waste storage facilities constructed after December 1, 1998, shall not be located on a  
1457 100-year floodplain. For the purposes of determining the 100-year floodplain, a Federal  
1458 Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA  
1459 Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be  
1460 used.

1461 4. Earthen waste storage facilities constructed after December 1, 1998, shall include a  
1462 properly designed and installed liner. Such liner shall be either a synthetic liner of at least  
1463 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum  
1464 permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer or  
1465 an employee of the Natural Resources Conservation Service of the U.S. Department of  
1466 Agriculture with appropriate engineering approval authority shall certify that the siting,  
1467 design, and construction of the waste storage facility comply with the requirements of this  
1468 subsection. This certification shall be maintained on site.

1469 5. At earthen waste storage facilities constructed below the seasonal high water table, the  
1470 top surface of the waste must be maintained at a level of at least two feet above the water  
1471 table.

1472 6. All liquid waste storage or ~~treatment~~ facilities shall maintain at least one foot of freeboard  
1473 at all times, up to and including a 25-year, 24-hour storm.

1474 C. Land application requirements. An animal waste end-user who (i) receives more than 10  
1475 tons of solid or semi-solid animal waste (solid or semi-solid animal waste contains less than 85%  
1476 moisture) or more than 6,000 gallons of liquid animal waste (liquid animal waste contains 85% or  
1477 more moisture) from an owner or operator of an animal feeding operation covered by a general  
1478 permit, an individual VPA permit, or VPDES permit and (ii) land applies animal waste shall follow  
1479 appropriate land application requirements as outlined in this subsection. The application of animal  
1480 waste shall be managed to minimize adverse water quality impacts.

1481 1. The maximum application rates can be established by the following methods:

- 1482 a. Phosphorus crop removal application rates can be used when:
- 1483 (1) Soil test phosphorus levels do not exceed the values listed in the Phosphorus
- 1484 Environmental Thresholds table below:

Phosphorus Environmental Thresholds	
Region	Soil Test P (ppm) VPI & SU Soil Test (Mehlich I)*
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
*If results are from another laboratory, <u>then</u> the Department of Conservation and Recreation approved conversion factors must be used.	

- 1485 (2) The phosphorus crop removal application rates are set forth by regulations
- 1486 promulgated by the Department of Conservation and Recreation in accordance with §
- 1487 10.1-104.2 of the Code of Virginia.
- 1488 b. Animal waste may be applied to any crop once every three years at a rate of no
- 1489 greater than 80 pounds of plant available phosphorus per acre when:
- 1490 (1) The plant available phosphorus supplied by the animal waste is based on a waste
- 1491 nutrient analysis obtained in the last two years;
- 1492 (2) In the absence of current soil sample analyses and recommendations; and
- 1493 (3) Nutrients have not been supplied by an organic source, other than pastured
- 1494 animals, to the proposed land application sites within the previous three years of the
- 1495 proposed land application date of animal waste.
- 1496 c. Soil test recommendations can be used when:
- 1497 (1) Accompanied by analysis results for soil tests that have been obtained from the
- 1498 proposed field ~~or fields~~ in the last three years;
- 1499 (2) The analytical results are from procedures in accordance with 4VAC50-85-140 A
- 1500 2 f; and
- 1501 (3) Nutrients from the waste application do not exceed the nitrogen or phosphorus
- 1502 recommendations for the proposed crop or double crops. The recommendations shall
- 1503 be in accordance with 4VAC50-85-140 A 2 a.
- 1504 d. A nutrient management plan developed by a certified nutrient management planner
- 1505 in accordance with § 10.1-104.2 of the Code of Virginia.
- 1506 2. The timing of land application of animal waste shall be appropriate for the crop, and in
- 1507 accordance with 4VAC50-85-140 A 4, except that no waste may be applied to ice covered
- 1508 or snow covered ground or to soils that are saturated.
- 1509 3. Animal waste shall not be land applied within buffer zones. Buffer zones at waste
- 1510 application sites shall, at a minimum, be maintained as follows:

- 1511 a. Distance from occupied dwellings: 200 feet (unless the occupant of the dwelling  
1512 signs a waiver of the buffer zone);
- 1513 b. Distance from water supply wells or springs: 100 feet;
- 1514 c. Distance from surface water courses: 100 feet (without a ~~permanent~~ vegetated  
1515 buffer) or 35 feet (if a ~~permanent~~ vegetated buffer exists). Other site-specific  
1516 conservation practices may be approved by the department that will provide pollutant  
1517 reductions equivalent or better than the reductions that would be achieved by the 100-  
1518 foot buffer;
- 1519 d. Distance from rock outcropping (except limestone): 25 feet;
- 1520 e. Distance from limestone outcroppings: 50 feet; and
- 1521 f. Waste shall not be applied in such a manner that it would discharge to sinkholes that  
1522 may exist in the area.

1523 4. In cases where the waste storage facility is threatened by emergencies such as fire or  
1524 flood or where these conditions are imminent, animal waste can be land applied outside  
1525 of the spreading schedule outlined in the animal waste fact sheet. If this occurs, then the  
1526 animal waste end-user shall document the land application information in accordance with  
1527 9VAC25-192-80 A 3.

1528 D. Animal waste end-users shall maintain the records demonstrating compliance with the  
1529 requirements of subsections B and C of this section for at least three years and make them  
1530 available to department personnel upon request.

1531 E. The activities of the animal waste end-user shall not contravene the Water Quality  
1532 Standards, ~~as amended and adopted by the board, (9VAC25-260)~~ or any provision of the State  
1533 Water Control Law (~~§ 62.1-44 et seq. of the Code of Virginia~~).

1534 F. Any duly authorized agent of the ~~board~~ department may, at reasonable times and under  
1535 reasonable circumstances, enter any establishment or upon any property, public or private, for  
1536 the purpose of obtaining information or conducting surveys or investigations necessary in the  
1537 enforcement of the provisions of this regulation.

1538 FORMS (9VAC25-192)

1539 ~~Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations~~  
1540 ~~for Owners of Animal Feeding Operations, RS, VPG1 (rev. 3/14)~~

1541 ~~Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations~~  
1542 ~~for Animal Waste End Users, RS End Users, VPG1 (rev. 3/14)~~

1543 [Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations](#)  
1544 [and Animal Waste Management for Owners of Animal Feeding Operations, RS AFO Owners,](#)  
1545 [VPG1 \(rev. 11/2024\)](#)

1546 [Virginia DEQ Registration Statement for VPA General Permit for Animal Feeding Operations](#)  
1547 [and Animal Waste Management for Animal Waste End-Users, RS End-Users, VPG1 \(rev.](#)  
1548 [11/2024\)](#)

1549 ~~Local Government Ordinance Form (eff. 11/94)~~

1550 [Local Government Ordinance Form \(eff. 11/2024\)](#)

1551 ~~Virginia DEQ Fact Sheet for Animal Waste Use and Storage (rev. 4/14)~~



**VIRGINIA DEQ REGISTRATION STATEMENT FOR VPA GENERAL PERMIT FOR ANIMAL FEEDING OPERATIONS (AFOs) AND ANIMAL WASTE MANAGEMENT**

**THIS FORM IS FOR OWNER'S OF ANIMAL FEEDING OPERATIONS**

**For DEQ Use Only:**  
 Accepted: Yes  No   
 Initials: \_\_\_\_\_  
 Date: \_\_\_\_\_

PLEASE TYPE OR PRINT ALL INFORMATION. ALL PARTS OF THIS FORM MUST BE COMPLETED ACCORDING TO THE INSTRUCTIONS

**1. AFO Owner's Information**

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Street

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Business Phone \_\_\_\_\_ Mobile Phone \_\_\_\_\_ Home Phone \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

The best day of the week & time to contact the AFO owner: \_\_\_\_\_  AM  
 Day Time  PM

**2. Operator or Contact Person's Information**

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Street

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Business Phone \_\_\_\_\_ Mobile Phone \_\_\_\_\_ Home Phone \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

The best day of the week & time to contact the operator or contact person: \_\_\_\_\_  AM  
 Day Time  PM

**3. AFO/Farm Information**

AFO/Farm Name: \_\_\_\_\_

Location: \_\_\_\_\_

Is the AFO a contract operation? YES \_\_\_\_\_ NO \_\_\_\_\_ Integrator: \_\_\_\_\_

Is there an existing VPA or VPDES permit that covers the AFO? YES \_\_\_\_\_ NO \_\_\_\_\_ Permit Number: \_\_\_\_\_

Indicate below the types and amounts of wastes that will be managed at the AFO:

Waste	Amount	Waste	Amount	Waste	Amount	Waste	Amount
Manure generated at AFO	<input type="checkbox"/> Gal	Manure not generated at AFO	<input type="checkbox"/> Gal	Off-Site generated waste	<input type="checkbox"/> Gal	Treated manure/waste	<input type="checkbox"/> Gal
	<input type="checkbox"/> Tons		<input type="checkbox"/> Tons		<input type="checkbox"/> Tons		<input type="checkbox"/> Tons

Will waste be transferred off-site? YES \_\_\_\_\_ NO \_\_\_\_\_, how much: \_\_\_\_\_  Gal \_\_\_\_\_  Tons

Types of animals and the maximum numbers of each type that will be at the AFO at any one time:

Animal Type	Maximum Number	Average Weight	Animal Type	Maximum Number	Average Weight	Animal Type	Maximum Number	Average Weight

4. **Attachments:** the following items must accompany this completed Registration Statement: (see instructions)
- a. the completed Local Government Ordinance Form (LGOF).
  - b. a copy of the nutrient management plan (NMP) approved by the Department of Conservation and Recreation (DCR).
  - c. a copy of the DCR NMP approval letter which also certifies that the NMP was developed by a certified NM planner in accordance with § 10.1-104.2 of the Code of Virginia.

5. **Certification:** "I certify that notice of the registration statement has been given to all owners or residents of property that adjoins the property on which the animal feeding operation will be located. This notice included the types and numbers of animals which will be maintained at the AFO and the address and phone number of the appropriate DEQ regional office to which comments relevant to this general permit may be submitted. (The preceding certification is waived if the registration is for renewing coverage under this general permit, and no expansion of the operation is proposed, and the department has not issued any special order or consent order relating to violations under the existing general permit.) I certify under penalty of law that all the requirements of the board for this general permit are being met and 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."

Signature: \_\_\_\_\_ Printed Name: \_\_\_\_\_ Date: \_\_\_\_\_

# INSTRUCTIONS FOR ANIMAL FEEDING OPERATIONS REGISTRATION STATEMENT

## VPA GENERAL PERMIT FOR ANIMAL FEEDING OPERATIONS AND ANIMAL WASTE MANAGEMENT

### General

A Registration Statement must be submitted when an owner of an animal feeding operation (AFO) makes application to the Department of Environmental Quality for coverage under the VPA General Permit for Animal Feeding Operations and Animal Waste Management. Contact the nearest DEQ regional office if you have questions about filing this form.

### Section 1 AFO Owner's Information

Provide the name, mailing address, telephone numbers and e-mail address (if available) of the person to whom this permit will be issued. Provide the best day of the week and time for DEQ to make contact with the owner during regular working hours.

### Section 2 Operator or Contact Person's Information

If there is a person other than the AFO owner who manages daily activities at the operation being permitted or who should be contacted for site visits, give that person's name, phone numbers and e-mail address (if available). If the operator or contact person is the same as the owner, write "SAME AS ABOVE". Provide the best day of the week and time for DEQ to make contact with the operator or contact person during regular working hours.

### Section 3 AFO/Farm Information

Provide the name of the farm. Provide the physical location of the AFO other than the owner's mailing address (e.g. Rt. 653, 1 mile west of Rt. 702). Indicate if the AFO has a contract with an integrator. If applicable, give the name of the integrator. List the permit number of any expiring or currently effective permits that cover the animal feeding operation under the VPA or VPDES permit program. Complete the table indicating which types of wastes and the amounts of wastes that will be managed at the AFO. If the waste listed in the table will not be managed at the AFO, write "N/A" for Not Applicable in the column labeled amount. If waste will be transferred off-site, indicate the type of waste and how much will be transferred.

### Animal Information

Indicate the type or types of animals (e.g. dairy cattle, slaughter and feeder cattle, swine, etc.), the average weight and the maximum numbers of each type or types that will be stabled or confined and fed or maintained at this AFO at any one time.

### Section 4 Attachments

#### a. Local Government Ordinance Form (LGOF)

State Law requires that the owner of any proposed pollutant management activities or those which have not previously been issued a valid VPA or VPDES permit must attach to the registration statement, the completed LGOF. The LGOF is the notification from the governing body of the county, city or town where the operation is located that the operation is consistent with all ordinances adopted pursuant to Chapter 22 (§ 15.2-2200 et seq.) of Title 15.2 of the Code of Virginia.

#### b. Nutrient Management Plan (NMP)

State law requires that every owner of an AFO seeking coverage under this general permit have an NMP. A copy of the NMP written for the AFO must be attached to the Registration Statement; however, if a current NMP is on file at the DEQ regional office then it is not necessary to attach the NMP.

#### c. NMP Approval Letter

A copy of the letter from the Virginia Department of Conservation and Recreation (DCR) approving the NMP for the AFO and certifying that the NMP was developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia must be attached to the Registration Statement. However, if a current NMP approval letter is on file at the DEQ regional office then it is not necessary to attach the NMP approval letter.

### Section 5 Certification

The Certification must bear an original signature in ink, photocopies are not acceptable. State statutes provide for severe penalties for submitting false information on this Registration Statement. State regulations require this Registration Statement to be signed as follows:

For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official 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 employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

For a partnership or sole proprietorship, by a general partner or proprietor, respectively.

**VIRGINIA DEQ REGISTRATION STATEMENT FOR VPA GENERAL PERMIT FOR ANIMAL FEEDING OPERATIONS (AFOs) AND ANIMAL WASTE MANAGEMENT**

**THIS FORM IS FOR ANIMAL WASTE END-USERS**

PLEASE TYPE OR PRINT ALL INFORMATION ALL PARTS OF THIS FORM MUST BE COMPLETED ACCORDING TO THE INSTRUCTIONS

**For DEQ Use Only:**  
 Accepted: Yes  No   
 Initials: \_\_\_\_\_  
 Date: \_\_\_\_\_

**1. Animal Waste End-User's Information**

Name: \_\_\_\_\_

Mailing Address: \_\_\_\_\_  
Street

\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Business Phone \_\_\_\_\_ Mobile Phone \_\_\_\_\_ Home Phone \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

The best day of the week & time to contact the End-User: \_\_\_\_\_  AM  
Day Time  PM

**2. Animal Waste Utilization, Storage and Management Location Information**

Name: \_\_\_\_\_

Location: \_\_\_\_\_

Is there an existing VPA or VPDES permit that covers this location? YES \_\_\_\_\_ NO \_\_\_\_\_

Permit Number: \_\_\_\_\_

Types of animals and the maximum numbers of each type that will be at the location at any one time: (if applicable)

Animal Type	Maximum Number	Average Weight	Animal Type	Maximum Number	Average Weight
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

3. **Attachments:** the following items must accompany this completed Registration Statement: (see instructions)
- a. a copy of the nutrient management plan (NMP) approved by the Department of Conservation and Recreation (DCR).
  - b. a copy of the DCR NMP approval letter which also certifies that the plan was developed by a certified nutrient management planner in accordance with § 10.1-104.2 of the Code of Virginia.
4. **Certification:** "I certify under penalty of law that all the requirements of the board for this general permit are being met and 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."

\_\_\_\_\_  
 Signature Printed Name Date

# INSTRUCTIONS FOR ANIMAL WASTE END-USERS REGISTRATION STATEMENT

## VPA GENERAL PERMIT FOR ANIMAL FEEDING OPERATIONS AND ANIMAL WASTE MANAGEMENT

### General

A Registration Statement must be submitted when an animal waste end-user makes application to the Department of Environmental Quality for coverage under the VPA General Permit for Animal Feeding Operations and Animal Waste Management. Contact the nearest DEQ regional office if you have questions about filing this form.

### Section 1 Animal Waste End-User's Information

Give the name, mailing address, telephone numbers and e-mail address (if available) of the person to whom this permit will be issued. Please provide the best day of the week and time for DEQ to make contact with the animal waste end-user during regular working hours.

### Section 2 Animal Waste Utilization, Storage and Management Location Information

Give the name location (if applicable). Give the physical address of the location where the animal waste will be utilized, stored, or managed other than the animal waste end-user's mailing address (e.g. Rt. 653, 1 mile west of Rt. 702). List the number of any expiring or currently effective permits issued to the animal waste end-user under the VPA or VPDES permit program.

#### Animal Information

If applicable, indicate the type or types of animals (e.g. dairy cattle, slaughter and feeder cattle, swine, etc.), the average weight and the maximum numbers of each type or types that will be stabled or confined and fed or maintained at this location at any one time.

### Section 3 Attachments

#### a. Nutrient Management Plan (NMP)

State law requires that anyone seeking coverage under the VPA general permit have a NMP. A copy of the NMP written for the operation must be attached to the Registration Statement; however, if a current NMP is on file at the DEQ regional office then it is not necessary to attach the NMP.

#### b. NMP Approval Letter

A copy of the letter from the Virginia Department of Conservation and Recreation (DCR) approving the NMP for the operation and certifying that the NMP was developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia must be attached to the Registration Statement. However, if a current NMP approval letter is on file at the DEQ regional office then it is not necessary to attach the NMP approval letter.

### Section 4 Certification

The Certification must bear an original signature in ink, photocopies are not acceptable. State statutes provide for severe penalties for submitting false information on this Registration Statement. State regulations require this Registration Statement or certification required by this permit shall be signed as follows:

For a corporation: by a responsible corporate official. For purposes of this section, a responsible corporate official 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 employing more than 250 persons or having gross annual sales or expenditures exceeding \$25,000,000 (in second quarter 1980 dollars), if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

For a municipality, state, federal or other public agency by either a principal executive officer or ranking elected official. (A principal executive officer of a federal, municipal, or state agency includes the chief executive officer of the agency or head executive officer having responsibility for the overall operation of a principal geographic unit of the agency.)

For a partnership or sole proprietorship, by a general partner or proprietor, respectively.



# FACT SHEET

## Requirements for Animal Waste Storage and Use

You have received this fact sheet because you are the end-user of animal waste (liquid, semi-solid, and solid animal manure and process wastewater, compost or sludges associated with animal feeding operations including the final treated wastes generated by a digester or other manure treatment technologies). As required by the Virginia Pollution Abatement Regulation and General Permit (9VAC25-192), animal waste must be used in a manner consistent with this fact sheet or as specified in a nutrient management plan prepared by a Virginia certified Nutrient Management Planner. This fact sheet is intended to specify best management practices for land application of animal waste as a source of crop nutrients in accordance with Sections 80 and 90 of 9VAC25-192. If animal waste is to be used for purposes other than land application to crops (for example: animal feed or fuel), these uses may be subject to other laws or regulations. If animal waste is to be used outside of Virginia, contact that state regarding their requirements.

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### Storage Requirements

Semi-solid and solid waste that is not immediately land applied must be stored properly.

1. Semi-solid and solid waste shall be stored in a manner that prevents contact with surface water and ground water. Semi-solid and solid waste that is stockpiled outside for more than 14 days shall be kept in a waste storage facility or at a site that provides adequate storage and include the following:

- a. Semi-solid and solid waste shall be covered to protect it from precipitation and wind;
- b. Storm water shall not run onto or under the stored semi-solid and solid waste;
- c. A minimum of two feet separation distance to the seasonal high water table or an impermeable barrier shall be used under the stored waste. All waste storage facilities that use an impermeable barrier shall maintain a minimum of one foot separation between the seasonal high water table and the impermeable barrier. Construct impermeable barriers of at least 12 inches of compacted clay, at least four inches of reinforced concrete, or another material of similar structural integrity that has a minimum permeability rating of 0.0014 inches per hour ( $1 \times 10^{-6}$  centimeters per second); and

d. For semi-solid and solid waste that is not stored in a waste storage facility or under roof, the storage site must be at least 100 feet from any surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs. For semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in the waste storage facility, the semi-solid and solid waste can be stored adjacent to the waste storage facility regardless of the location of the waste storage facility so long as surface water, intermittent drainage, wells, sinkholes, rock outcrops, and springs are protected from runoff from the stored semi-solid and solid waste.

Semi-solid and solid waste that is stored on an impermeable barrier and where any stormwater runoff is collected in a waste storage facility is considered adequate storage and is therefore not required to be covered.

2. Any liquid animal waste collection and storage facility shall be designed and operated to (i) prevent point source discharges of pollutants to state waters except in the case of a storm event greater than the 25-year, 24-hour storm and (ii) provide adequate waste storage capacity to accommodate periods when the ground is frozen or saturated, periods when land application of nutrients should not occur due to limited or nonexistent crop nutrient uptake, and periods when physical limitations prohibit the land application of waste.

3. Waste storage facilities constructed after December 1, 1998, shall not be located on a 100-year floodplain. For the purposes of determining the 100-year floodplain, a Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM), a FEMA Letter of Map Amendment (LOMA), or a FEMA Letter of Map Revision (LOMR) shall be used.

4. Earthen waste storage facilities constructed after December 1, 1998, shall include a properly designed and installed liner. Such liner shall be either a synthetic liner of at least 20 mils thickness or a compacted soil liner of at least one foot thickness with a maximum permeability rating of 0.0014 inches per hour. A Virginia licensed professional engineer or an employee of the Natural Resources Conservation Service of the United States Department of Agriculture with appropriate engineering approval authority shall certify that the siting, design and construction of the waste storage facility comply with the requirements of subsection B of 9VAC25-192-90. This certification shall be maintained on site.

5. At earthen waste storage facilities constructed below the seasonal high water table, the top surface of the waste must be maintained at a level of at least two feet above the water table.

6. All liquid waste storage facilities shall maintain at least one foot of freeboard at all times, up to and including a 25-year, 24-hour storm.

## Application Rate

The animal waste application rate can be determined using one of four options:

### Option 1: Nutrient Management Plan

Animal waste application rates based on a nutrient management plan can be used when the plan has been developed by a certified nutrient management planner in accordance with §10.1-104.2 of the Code of Virginia. For assistance in locating a nutrient management plan writer: contact DCR at 804-225-4533 or consult the Virginia Nutrient Management Certified Planner Directory, available at: [http://www.dcr.virginia.gov/water\\_quality/documents/nmdir.pdf](http://www.dcr.virginia.gov/water_quality/documents/nmdir.pdf)

### Option 2: Standard Rate

Animal waste may be applied to any crop at a rate of no greater than 80 pounds of plant available phosphorus per acre once every three years under the following conditions:

- 1) The plant available phosphorus supplied by the animal waste is based on a waste nutrient analysis obtained in the last two years;
- 2) In the absence of current soil sample analyses and recommendations; and
- 3) Nutrients have not been supplied by manure, biosolids, or other organic sources, other than pastured animals, to the proposed land application sites within the previous three years of the proposed land application date of animal waste.

### Option 3: Soil Test Recommendations

Animal waste application rates based on soil test recommendations can be used under the following conditions:

- 1) The soil sample has been obtained in the last three years from the proposed field where animal waste will be applied.
- 2) Soil test recommendations have been provided by a laboratory whose procedures and recommendations are approved by the Department of Conservation and Recreation. Recommendations from the following laboratories are approved by DCR:
  - ⇒ Waypoint Analytical Virginia (804) 743-9401
  - ⇒ Spectrum Analytical Lab 1-800-321-1562
  - ⇒ Virginia Tech Soil Testing Lab (540) 231-6893
- 3) Nutrients from the animal waste application do not exceed the nitrogen needs for the crop, and phosphorus recommendations do not exceed the recommendations for the crops in a three year rotation. If the animal waste application rate is made to supply all of the future crop phosphorus needs, no additional phosphorus is to be applied during the rotation.

#### Example for Calculating Animal Waste Rate Based on Soil Test Recommendation:

$$\text{Animal Waste Application Rate (Gallons or Tons per acre)} = \frac{\text{Soil Test P Recommendation}}{\text{Animal Waste P Analysis}}$$

Corn crop needs: **120 lbs/acre Nitrogen** and soil test recommendation for **60 lbs/ac Phosphorus**

Animal waste analysis: Available Nitrogen = **40 lbs/ton of animal waste**, P<sub>2</sub>O<sub>5</sub> = **50 lbs/ton of animal waste**

	<u>1<sup>st</sup> Crop</u>	+	<u>2<sup>nd</sup> Crop</u>	+	<u>3<sup>rd</sup> Crop</u>	Options
<i>Three (3) Crop Rotation:</i>	Corn grain <b>60 lbs/ac P recommended</b> 1.2 tons animal waste	+	Wheat grain <b>60 lbs/ac P recommended</b> 1.2 tons animal waste	+	Soybeans <b>60 lbs/ac P recommended</b> 1.2 tons animal waste	<b>Apply 1.2 tons to each crop OR Apply only 3.0 tons animal waste to Corn (0.6 tons animal waste to Wheat or Soybeans)</b>

In this example, 1.2 tons of animal waste (60 ÷ 50) will provide the 60 lbs of phosphorus needed for each crop with the nitrogen needs supplemented by commercial fertilizer. Alternatively, applying 3.0 tons of animal waste to the corn crop provides 150 lbs (50x3) of phosphorus for the rotation without exceeding the 120 lbs of nitrogen (40x3) needed by the corn crop. Animal waste used on the wheat or beans cannot exceed the total phosphorus needs of the rotation.

## Option 4: Phosphorous Crop Removal

Animal waste application rates based on phosphorus crop removal can be used when the soil test phosphorus levels do not exceed the values listed in Table 1. Table 2. is used to determine the pounds of P<sub>2</sub>O<sub>5</sub> removed per unit of harvested yield.

ANIMAL WASTE RATE CALCULATION			
Animal Waste Rate	=	Yield per acre (tons or bushels)	X P <sub>2</sub> O <sub>5</sub> removal per yield unit (lbs)
(Gallons or Tons per acre)		Animal Waste P <sub>2</sub> O <sub>5</sub> content (lbs per gallon or ton)	

Table 1. Phosphorus Environmental Thresholds (Maximum Soil P)	VPI & SU (Mehlich I)		A&L (Mehlich III)	
	P (lbs/acre)	P (ppm)	P (lbs/acre)	P (ppm)
REGION				
Eastern Shore and Lower Coastal Plain	270	135	506	253
Middle and Upper Coastal Plain and Piedmont	272	136	508	254
Ridge and Valley	324	162	562	281

Table 2. Phosphorus Removed		
Crops	LBS. P <sub>2</sub> O <sub>5</sub> Per Yield Unit (lbs)	
	Grain - Bushels	Silage - Tons
<b>Row Crops</b>		
Corn	0.38	4.2
Wheat	0.51	4.2
Barley	0.40	5.1
Rye	0.45	5.6
Soybeans	0.89	10.0
<b>Forages</b>	Hay - Tons	Pasture
Fescue or Orchardgrass	16.0	****
Bermudagrass	10.4	****

### Notes for Table 2:

- \*\*\*\* divide 25 by the animal waste P<sub>2</sub>O<sub>5</sub> content to calculate the animal waste application rate.
- For double crops, add removal for each crop.
- Additional crops - see Table 4-7 of the DCR Standards and Criteria at: <http://www.dcr.virginia.gov/documents/StandardsandCriteria.pdf>

## Soil Samples

Where soil samples are necessary to utilize any of the methods described in this document the sample must be less than three (3) years old. A representative soil sample of each field is comprised of at least 20 cores randomly sampled throughout the field. Samples should be taken from the top 4 inches of soil where land is not tilled, or the top 6 inches of soil where land is tilled.

## Land Application Timing in Cases of Emergency

In cases of where the waste storage facility is threatened by emergencies such as fire or flood or where these conditions are imminent, animal waste can be land applied outside of the spreading schedule outlined in this Fact Sheet. If this occurs, the animal waste end-user shall document the land application information in accordance with (9VAC25-192-80 A 3) summarized in the *Recordkeeping Requirements Section* on page 4 of this Fact Sheet.

## Land Application Conditions & Buffer Zones

Do not spread animal waste within the following buffer zones:

- 100 feet from wells or springs
- 100 feet from surface water without a vegetated buffer\*
- 35 feet from surface water with a vegetated buffer\*
- Animal waste may not be applied to ice or snow covered ground or saturated soils
- 25 feet from other rock outcroppings
- 50 feet from limestone outcroppings
- 200 feet from occupied dwellings (unless the occupant signs a waiver of the buffer zone)
- Animal waste shall not be applied in such a manner that it would discharge to sinkholes that may exist in the area

\* A vegetated buffer is a permanent strip of dense vegetation established parallel to the contours of and perpendicular to the dominant slope of the field.

## Land Application Timing

The application schedule below shall be followed in cases where the land application is not being covered under a Nutrient Management Plan (NMP) - not using *Option 1. - NMP* to determine the land application rate.

CROP	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
Corn												
Small Grain												
Hay or Pasture *												
Hay or Pasture **												
* Includes all cool-season grasses: fescue, orchardgrass (growth occurs in the cooler months of the spring & fall)												
** Includes all warm-season grasses: bermudagrass (growth occurs in the heat of the summer)												
	Animal waste may be spread during these periods											
	Do not spread animal waste during these shaded periods											

**Do not spread animal waste more than 30 days prior to planting.**

## Recordkeeping

Land application of animal waste must comply with the criteria outlined in this fact sheet. All records must be maintained for at least three (3) years from the date of the transaction and land application date.

The attached forms are provided to meet the recordkeeping requirements of the end-user.

(See "End-User Animal Waste Transfer Recordkeeping Form" & "Animal Waste Land Application Recordkeeping Form")

The following items related to animal waste transactions must be provided to the source of the animal waste by the end-user:

⇒ Recipient's name & Signature	⇒ Locality where animal waste will be utilized (nearest town/city and zip code)	⇒ Name of stream or waterbody nearest to utilization or storage site
⇒ Recipient's address		

The following items related to animal waste transactions must be documented by the end-user:

⇒ Source's name	⇒ Date animal waste was received	⇒ Locality where animal waste will be utilized (nearest town/city and zip code)
⇒ Source's address	⇒ Amount of animal waste received	
⇒ Source's permit number (if applicable)	⇒ Final use of animal waste	⇒ Name of stream or waterbody nearest to utilization or storage site

The following items related to land application of animal waste must be documented by the end-user:

⇒ Nutrient analysis of animal waste	⇒ Land application rate(s)	⇒ Method used to determine the animal waste application rate(s): (NMP, standard rate, soil test recommendations or phosphorus crop removal)
⇒ Maps identifying the application fields and storage sites	⇒ Land application date(s)	
	⇒ Crops planted	
	⇒ Soil test results (if obtained)	⇒ Nutrient management plan (if applicable)

## Additional Information

This fact sheet provides basic information. For additional information regarding requirements for animal waste management, please visit the <https://law.lis.virginia.gov/admincode/title9/agency25/chapter192/section80/> and <https://law.lis.virginia.gov/admincode/title9/agency25/chapter192/section90/> and the DEQ website at <https://www.deq.virginia.gov/our-programs/water/land-application-beneficial-reuse/animal-agricultural-waste>

You may also contact the Virginia DEQ toll free (in Virginia) at **1-800-592-5482**.

## End-User Animal Waste Transfer Recordkeeping Form

*This record must be maintained by the end-user for at least three (3) years from the date of the transfer.*

<b>SOURCE INFORMATION: Animal Feeding Operations Owner/Permittee</b>			
DEQ Permit #: _____			
Name: _____		Business Name: _____	
Mailing Address: _____			
Street	City	State	Zip

Date(s):	Amount:	Gallons	Waste Analysis N-P-K (available - lbs/gal or ton):
		Tons	
Locality where litter will be utilized or stored:			Nearest Stream or Waterbody to Land Application or Storage Area:
Town or City	Zip		
Final Use of Waste: Fertilizer    Feed    Fuel    Other (specify):			

Date(s):	Amount:	Gallons	Waste Analysis N-P-K (available - lbs/gal or ton):
		Tons	
Locality where litter will be utilized or stored:			Nearest Stream or Waterbody to Land Application or Storage Area:
Town or City	Zip		
Final Use of Waste: Fertilizer    Feed    Fuel    Other (specify):			

<b>SOURCE INFORMATION: Animal Feeding Operations Owner/Permittee</b>			
DEQ Permit #: _____			
Name: _____		Business Name: _____	
Mailing Address: _____			
Street	City	State	Zip

Date(s):	Amount:	Gallons	Waste Analysis N-P-K (available - lbs/gal or ton):
		Tons	
Locality where litter will be utilized or stored:			Nearest Stream or Waterbody to Land Application or Storage Area:
Town or City	Zip		
Final Use of Waste: Fertilizer    Feed    Fuel    Other (specify):			

Date(s):	Amount:	Gallons	Waste Analysis N-P-K (available - lbs/gal or ton):
		Tons	
Locality where litter will be utilized or stored:			Nearest Stream or Waterbody to Land Application or Storage Area:
Town or City	Zip		
Final Use of Waste: Fertilizer    Feed    Fuel    Other (specify):			



Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-192 et seq.
<b>VAC Chapter title(s)</b>	Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management
<b>Action title</b>	<b>2024 Reissue and amend, as necessary, the Virginia Pollution Abatement (VPA) Regulation and General Permit for Animal Feeding Operations and Animal Waste Management</b>
<b>Date this document prepared</b>	May 2, 2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Final exempt

**Cost Benefit Analysis**

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

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

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

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Background:</b> § 62.1-44.17:1.B. of the Code of Virginia requires that the State Water Control Board utilize a General Virginia Pollution Abatement (VPA) permit to permit Animal Feeding Operations (AFOs) that meet the requirements of the Code. VPA general permits expire every 10 years</p>
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	<p>and must be re-issued in order for permit coverage to be available to new permittees and existing covered permittees. If the general permit is not re-issued, the regulated community will need to obtain an individual permit to conduct the regulated activity. For this reason, the costs associated with obtaining an individual permit are compared with the costs associated with general permit coverage.</p> <p>Regulating AFOs through the reissuance of a general permit regulation is an alternate streamlined approach that is used to regulate entities that conduct similar activities. A benefit of this general permit is its lower cost to permittees relative to the cost of obtaining an individual permit. While the Code of Virginia exempts AFOs from permit fees for both individual and general permits, the exemption does not include the cost of publication of a public notice advertisement required for an individual permit, which would average approximately \$500. The individual permit application is also longer and more detailed, requiring more time to prepare, and some applicants might choose to pay a consultant to prepare an individual permit application. This general permit thus represents a savings of at least \$500. There are currently 108 AFOs covered under this permit representing a total savings of approximately \$54,000 for the permit sector.</p> <p>These costs do not account for the longer lead time to obtain an individual permit and the increased burden on DEQ staff resources that would result.</p> <p>Costs and benefits of significant amendments to the current general permit include:</p> <ul style="list-style-type: none"> <li>• 9 VAC25-192-10 – Definitions – The regulation was updated to include additional definitions and modifications of existing definitions.</li> </ul> <p><b>Direct Costs:</b> None</p> <p><b>Direct Benefits:</b> No direct economic benefits to regulated entities.</p> <p><b>Indirect Costs:</b> None</p> <p><b>Indirect Benefits:</b> The additions and amendments to the definitions section will facilitate a better understanding of the terms used throughout the regulation sections and reduce the regulatory burden on AFOs and animal waste end-users by making the terms and style used throughout the regulations consistent with other sections and chapters. These amendments will also make this regulation consistent with the VPA</p>
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	<p>Regulation and General Permit for Poultry Waste Management (9VAC25-630-10 et seq.).</p> <ul style="list-style-type: none"><li>● 9VAC25-192-70. Part I.A. &amp; Part III.A.– Groundwater monitoring requirements:<ul style="list-style-type: none"><li>○ The department requires permittees to prepare and submit a groundwater monitoring action plan when monitoring results indicate potential noncompliance with the general permit. The amendments to Parts I.A. and III. A. clarify when groundwater monitoring action plan is expected.</li><li>○ Added a permit condition that outlines which parameters must be analyzed by a laboratory accredited under the Virginia Environmental Laboratory Accreditation Program (VELAP) in accordance with 1VAC30-46-20. This requirement is already in place; adding it to the permit conditions makes it clear to the permittee.</li></ul></li></ul> <p><b>Direct Costs:</b> None to the permittee. All of the amendments make the regulation consistent with other requirements already being implemented by DEQ.</p> <p><b>Direct Benefits:</b> No direct economic benefits to regulated entities.</p> <p><b>Indirect Costs:</b> None</p> <p><b>Indirect Benefits:</b> The amendments make permit requirements clear. Clarity reduces administrative burden and time on the permittee to ensure compliance with the permit.</p> <ul style="list-style-type: none"><li>● 9VAC25-192-70 Part I.B.2 &amp; Part III.B.2 – Site design, storage, and operations requirements: Specifies which tools are to be used to determine the floodplain when siting waste storage facilities to ensure permittees use a consistent, widely accepted standard [i.e. floodplain maps developed by the Federal Emergency Management Agency (FEMA)]. Adding the language ensures that the permittee will know what tools must be used to make this determination.</li></ul> <p><b>Direct Costs:</b> None</p> <p><b>Direct Benefits:</b> No direct economic benefits to regulated entities.</p> <p><b>Indirect Costs:</b> None</p>
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	<p><b>Indirect Benefits:</b> The amendments make permit requirements clear. Clarity reduces administrative burden and time on the permittee to ensure compliance with the permit.</p> <ul style="list-style-type: none"><li>• 9VAC25-192-70 Part I.B.8.d. &amp; Part III.B.8.d. – Site design, storage, and operations requirements: The amended permit conditions outline what is considered adequate storage of semi-solid and solid waste.</li></ul> <p><b>Direct Costs:</b> None</p> <p><b>Direct Benefits:</b> The amendment would reduce the cost to cover certain manure storage for which covering would provide no environmental benefit. Actual costs would vary widely depending upon storage practices. Typically, tarpaulins are used to cover semi-solid and solid manures when a roof structure is unavailable. Staff estimates a cost savings of \$3,700.00 for one 100-foot x 50-foot (700 denier, 5-millimeter high-density polyethylene, ultraviolet and weather resistant tarpaulin).</p> <p><b>Indirect Costs:</b> None</p> <p><b>Indirect Benefits:</b> The amendments make permit requirements clear. Clarity reduces administrative burden and time on the permittee to ensure compliance with the permit.</p> <ul style="list-style-type: none"><li>• 9VAC25-192-70 Part I.B.11. &amp; Part III.B.11. – Site design, storage, and operations requirements: Requires notification to the department prior to the closure of a liquid waste storage facility. This notification is an addition to an existing permit condition related to the closure of a waste storage facility.</li></ul> <p><b>Direct Costs:</b> None</p> <p><b>Direct Benefits:</b> No direct economic benefits to regulated entities.</p> <p><b>Indirect Costs:</b> None to the permittee other than the time to notify DEQ of the pending closure.</p> <p><b>Indirect Benefits:</b> Notifying DEQ of the closure will enable agency staff to provide compliance assistance and proper closure procedures to the permittee. Additional communication with DEQ prior to commencing a regulated activity increases the probability of compliance with the permit, adequate environmental protection, and reduces the possibility the</p>
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	<p>permittee will spend money on activities that do not meet regulatory requirements.</p> <ul style="list-style-type: none"> <li>9VAC25-192-70 Part I.C.2. &amp; Part III.C.2. – Animal waste use and transfer requirements: Requires the permittee to submit revised Nutrient Management Plans (NMPs) approved by the Department of Conservation and Recreation (DCR) to DEQ within 30 days of the DCR approval.</li> </ul> <p><b>Direct Costs:</b> If the permittee sends the NMP through the U.S. Postal Service, there will be postage fees starting at \$9.85 for each revision sent to DEQ. If the permittee gives the DEQ inspector the NMP during the inspection, then there will be no postage fee. If the permittee has a way to scan and email the NMP to DEQ, then there will be no postage fee to send the NMP to DEQ. A minimum of three revisions will be necessary to maintain compliance with this permit over the 10-year permit term bringing the figure to an estimated cost of \$29.55 for the 10-year term.</p> <p><b>Direct Benefits:</b> No direct economic benefits to regulated entities.</p> <p><b>Indirect Costs:</b> None other than the time for the permittee to send the NMP to DEQ. Permit holders are already required to maintain a valid plan and provide it to DEQ.</p> <p><b>Indirect Benefits:</b> The amendment makes permit requirements clear and ensures that the permittee has the most accurate nutrient management guidelines for the current crop needs. Clarity reduces administrative burden and time on the permittee to ensure compliance with the permit.</p> <ul style="list-style-type: none"> <li>9VAC25-192-70 Part I.C.5. &amp; Part III.C.5 – Animal waste use and transfer requirements: The amendment provides options to the permittees when animal waste storage facilities are threatened by emergencies such as fire or flood. The amendment allows the land application of animal waste outside of the land application schedule found in the NMP so long as land application information is documented, and the Department is notified.</li> </ul> <p><b>Direct Costs:</b> None</p> <p><b>Direct Benefits:</b> This condition provides permittees with practical options to avoid catastrophic failure of an animal waste storage facility and clear requirements related to waste storage</p>
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	<p>and land application when the permittee is faced with an emergency. Costs to repair an animal waste facility would vary depending upon the size and nature of the failure.</p> <p><b>Indirect Costs:</b> None</p> <p><b>Indirect Benefits:</b> The condition makes the option available to respond to an emergency clear to the permittee, reducing the amount of time a permittee might spend corresponding with DEQ when immediate action is necessary.</p> <ul style="list-style-type: none"> <li>9VAC25-192-70 Part II – Conditions Applicable to this General Permit - The amendments re-organize and renumber the conditions found in Part II of Section 70 (the contents of the general permit) so they are consistent with the VPA regulation, 9VAC25-32, and VPA General Permit for Poultry Waste Management (9VAC25-630).</li> </ul> <p><b>Direct Costs:</b> None</p> <p><b>Direct Benefits:</b> No direct economic benefits to regulated entities.</p> <p><b>Indirect Costs:</b> None</p> <p><b>Indirect Benefits:</b> Consistency within the VPA permit program provides clarity for permittees who may be covered by both permit types as well as for DEQ inspectors verifying compliance with both permit types.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) see above	(b) see above
(3) Net Monetized Benefit	See above	
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources	<p>9VAC25-20-50 Exemptions (stating that VPA facilities operating under a general permit are exempt from permit application and maintenance fees):</p> <p>Staff estimates of costs for publishing public notices for individual permits. Staff estimates costs for mailing the NMP revisions through the</p>	

	U.S. Postal Service website. Staff estimates cost savings for not covering semi-solid and solid manure storage through internet research.
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**Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)**

(1) Direct & Indirect Costs & Benefits (Monetized)	Available general cost and benefit data is provided in Table 1a. Given the general character of this data, it would also be applicable to the general permit under the status quo.  <b>Direct Costs:</b> See Table 1a. <b>Indirect Costs:</b> See Table 1a. <b>Direct Benefits:</b> See Table 1a. <b>Indirect Benefits:</b> See Table 1a.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	Consistent with § 62.1-44.17:1 of the Code of Virginia, nonpoint source discharges of pollutants, including those from animal feeding operations, must be authorized by a VPA permit under the State Water Control Law. Thus, no non-regulatory options were determined to be available.  DEQ is not aware of any alternatives to the current proposal other than (1) reissuance of the current general permit with no modifications and (2) allowing the general permit regulation to lapse and issuing individual permits.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	

(4) Other Costs & Benefits (Non-Monetized)	N/A
(5) Information Sources	N/A

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

(1) Direct & Indirect Costs & Benefits (Monetized)	This general permit regulation is for Animal Feeding Operations (AFOs) and animal waste end-users which are activities that are not conducted by local governments. <b>Direct Costs:</b> None. <b>Indirect Costs:</b> None. <b>Direct Benefits:</b> None. <b>Indirect Benefits:</b> None.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Assistance	N/A	
(5) Information Sources	N/A	

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs &	Most of the regulated entities are family farms, and the direct and indirect costs and benefits to these families would be as described in Table 1a.
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Benefits (Monetized)		
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) see Table 1a.	(b) see Table 1a.
(3) Other Costs & Benefits (Non-Monetized)	see Table 1a.	
(4) Information Sources	see Table 1a.	

**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Small businesses would have the same impact as described in Table 1a. above.</p> <p>General permits provide the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity. Without this general permit regulation, an individual permit would be required to conduct the regulated activity at a cost of approximately \$500 more for each small business covered under the general permit. DEQ does not have access to information necessary to determine how many of the 108 facilities covered under this general permit qualify as small business as defined under the Administrative Process Act but there are likely some entities that are small businesses.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) see Table 1a.	(b) see Table 1a.
(3) Other Costs & Benefits (Non-Monetized)	see Table 1a.	
(4) Alternatives	see Table 1a.	
(5) Information Sources	see Table 1a.	

**Changes to Number of Regulatory Requirements****Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

*Change in Regulatory Requirements*

<b>VAC Section(s) Involved*</b>	<b>Authority of Change</b>	<b>Initial Count</b>	<b>Additions</b>	<b>Subtractions</b>	<b>Total Net Change in Requirements</b>
9VAC25-192-10	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>0</b>	0	0	0
	<b>(D/R):</b>	<b>0</b>	0	0	0
9VAC25-192-15	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>0</b>	0	0	0
	<b>(D/R):</b>	<b>0</b>	0	0	0
9VAC25-192-20	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>0</b>	0	0	0
	<b>(D/R):</b>	<b>0</b>	0	0	0
9VAC25-192-25	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>1</b>	0	0	0
	<b>(D/R):</b>	<b>3</b>	0	1	-1
9VAC25-192-50	<b>(M/A):</b>	<b>3</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>12</b>	0	0	0
	<b>(D/R):</b>	<b>18</b>	0	0	0
9VAC25-192-60	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>10</b>	0	0	0
	<b>(D/R):</b>	<b>19</b>	0	0	0
9VAC25-192-70 Part I	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>53</b>	3 <sup>A,B</sup>	0	+3

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
	<b>(D/R):</b>	<b>65</b>	5 <sup>C, D,E,F,G</sup>	1 <sup>H</sup>	+4
9VAC25-192-70 Part II	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>4</b>	0	0	0
	<b>(M/R):</b>	<b>9</b>	32 <sup>I</sup>	0	+32
	<b>(D/R):</b>	<b>31</b>	0	20	-20
9VAC25-192-70 Part III	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>53</b>	3 <sup>J</sup>	0	+3
	<b>(D/R):</b>	<b>65</b>	5	1	+4
9VAC25-192-80	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>0</b>	0	0	0
	<b>(D/R):</b>	<b>25</b>	0	0	0
9VAC25-192-90	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>6</b>	1 <sup>K</sup>	0	+1
	<b>(D/R):</b>	<b>35</b>	2 <sup>L,M</sup>	1	+1
<b>Grand Total of Changes in Requirements:</b>					<b>(M/A): 0</b>
					<b>(D/A): 0</b>
					<b>(M/R): +39</b>
					<b>(D/R): -12</b>

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Not all regulatory requirements apply to all permittees, and some requirements are only applicable if certain conditions exist.*

<sup>A</sup> Incorporated Virginia Environmental Laboratory Accreditation Program requirements for sample analysis to comply with Division of Consolidated Laboratory Services requirements in Va. Code § 2.2-1105 and 1VAC30-46.

- <sup>B</sup> Clarifies statutory requirement that waste storage facilities shall not be located on a 100-yr floodplain by requiring use of FEMA data to determine the location of the floodplain.
- <sup>C</sup> Adds requirement to provide notification of closure.
- <sup>D</sup> Codified established practice of preparing groundwater monitoring action plan when monitoring results indicate potential noncompliance (2 requirements).
- <sup>E</sup> Clarifies requirements for storage of semi-solid and solid waste that is not stored in a waste storage facility or under roof. Provides certainty for operator and regulatory agencies.
- <sup>F</sup> Provides regulatory flexibility for permittees where a waste storage facility is threatened by an emergency such as fire or flood. Adds requirement to document information if land application occurs as a result of the emergency situation.
- <sup>G</sup> Clarifies when permittee is required to provide a copy of an approved Nutrient Management Plan to DEQ.
- <sup>H</sup> Removes requirement to use cover when stormwater is collected in a waste storage facility.
- <sup>I</sup> Revisions to Part II make it consistent with the Virginia Pollutant Abatement (VPA) Permit Regulation, 9VAC25-32, the base regulation for all VPA permits, which has been amended since the last AFO GP was issued in 2014, and the Virginia Pollution Abatement Regulation and General Permit for Poultry Waste Management, 9VAC25-630, which was amended and reissued for a 10-year term in February 2021.
- <sup>J</sup> Part III of 9VAC25-192-70 contains the same requirements as Part I, but is applicable to animal waste end users; Part I is applicable to animal feeding operations.
- <sup>K</sup> Clarifies statutory requirement that waste storage facilities shall not be located on a 100-yr floodplain by requiring use of FEMA data to determine the location of the floodplain. This is the same requirement as in 9VAC25-192-70, but is applicable to animal waste end-users that are not required to have a general permit.
- <sup>L</sup> Provides regulatory flexibility for end users where a waste storage facility is threatened by an emergency such as fire or flood. Adds requirement to document information if land application occurs as a result of the emergency situation. This is the same requirement as in 9VAC25-192-70, but is applicable to animal waste end-users that are not required to have a general permit.
- <sup>M</sup> Clarifies requirements for storage of semi-solid and solid waste that is not stored in a waste storage facility or under roof. Provides certainty for operator and regulatory agencies. Removes requirement to use cover when stormwater is collected in a waste storage facility. This is the same requirement as in 9VAC25-192-70, but is applicable to animal waste end-users that are not required to have a general permit.

*Cost Reductions or Increases (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Requirement</b>	<b>Initial Cost</b>	<b>New Cost</b>	<b>Overall Cost Savings/Increases</b>
9VAC25-192	Cost of individual permit vs general permit regulation	Cost associated with public notice requirements of Individual permit if general permit is not reissued-\$500	There is no cost to permittees associated with public notice requirements for the General permit - \$0	The general permit represents a savings of \$500 per facility (for public notice costs) or a total of \$54,000 for the sector over a 10-year permit term based on the 108 facilities currently covered by the general permit. No additional expenses are expected from the

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
				additional provisions included in Table 5. These additional provisions would also be included in any individual permits issued so they do not represent an increase in requirements/costs over the individual permit alternative.
9VAC25-192	The proposal adds a requirement for the permittee to submit revised NMPs approved by the DCR.	Prior to the proposed amendment, the permittee would give the DEQ inspector the revised NMPs during the inspection.	If the permittee sends the NMP through the U.S. Postal Service, there will be postage fees starting at \$9.85 for each revision sent to DEQ. If the permittee gives the DEQ inspector the NMP during the inspection, then there will be no postage fee. If the permittee has a way to scan and email the NMP to DEQ, then there will be no postage fee to send the NMP to DEQ.	If mailing the NMP, the permittee could incur a charge of at least \$9.85 each time they mail a revised NMP to the DEQ. This figure could vary based on U.S. Postal Service rate increases and the number of NMP revisions necessary. A minimum of three revisions will be necessary to maintain compliance with this permit over the 10-year permit term bringing the figure to an estimated cost of \$29.55 for the 10-year term.
9VAC25-192	The proposal includes	The permittee is required to cover	There are no new costs	Staff estimates a cost savings of

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
	<p>amended permit conditions outlining what is considered adequate storage of semi-solid and solid waste.</p>	<p>all semi-solid and solid waste that is stored outside of a storage facility with a roof for more than 14 days. The amendment would reduce the cost to cover certain manure storage for which covering would provide no environmental benefit. Actual costs would vary widely depending upon storage practices. Typically, tarpaulins are used to cover semi-solid and solid manures when a roof structure is unavailable. Staff estimates a cost of \$3,700.00 for one 100-foot x 50-foot (700 denier, 5 millimeter high-density polyethylene, ultraviolet and weather resistant tarpaulin).</p>	<p>associated with the proposed amendment. It is expected there will be a savings associated with this amendment.</p>	<p>\$3,700.00 for one 100-foot x 50-foot (700 denier, 5-millimeter high-density polyethylene, ultraviolet and weather resistant tarpaulin).</p>

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Change</b>	<b>Overview of How It Reduces or Increases Regulatory Burden</b>
N/A	N/A	The regulatory burden of reissuing the general permit is much reduced compared to requiring an individual permit. See 1a above.

*Length of Guidance Documents (only applicable if guidance document is being revised)*

<b>Title of Guidance Document</b>	<b>Original Word Count</b>	<b>New Word Count</b>	<b>Net Change in Word Count</b>
N/A	N/A	N/A	N/A

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

**TAB H**



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

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Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

**MEMORANDUM**

**TO:** State Water Control Board Members

**FROM:** Elizabeth Mckercher

A handwritten signature in black ink, appearing to read "Elizabeth Mckercher".

Director, Water Planning Division

**DATE:** May 9, 2024

**SUBJECT:** Fast-track Modification to the Water Quality Standards Regulation regarding Implementation Requirements For Criteria Specific to the Chesapeake Bay and Its Tidal Tributaries

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**Executive Summary**

Staff intends to ask the Board at their June 2024 meeting for approval to initiate a rulemaking to amend the Water Quality Standards (WQS) regulation with revised language pertaining to the implementation of Chesapeake Bay criteria. The staff proposal will be for a fast-track rulemaking as the amendment is expected to be noncontroversial. This proposed change is prompted by DEQ staff who believe that the proposed revision will provide greater flexibility for criteria implementation and make additional datasets available for Chesapeake Bay water quality assessments.

**Background**

The Cumulative Frequency Distribution (CFD) approach has been used by the Chesapeake Bay Program Office since the early 2000s to assess water quality thresholds and criteria in the Chesapeake Bay and its tidal tributaries. This statistical tool allows criteria nonattainment to be expressed in terms of space and time, rather than just in time as more conventional tools do. When Virginia adopted the Chesapeake Bay criteria for the protection of aquatic life recommended by EPA in 2005, implementation language requiring the CFD was also adopted.

Since that time, DEQ staff have identified limitations of the CFD approach. The most significant constraint is that the CFD procedure currently used by the Chesapeake Bay Program Office is not compatible with state-of-the-art automated, continuous, and high frequency datasets. The proposed amendment would specify that Chesapeake Bay criteria can be assessed using the currently utilized method, but also allowing for alternate scientifically defensible methods. This proposed change is prompted by DEQ staff who believe that the proposed revision will provide greater flexibility for criteria implementation and make additional datasets available for Chesapeake Bay water quality assessments. Since the current regulations require use of the CFD methodology, a regulatory change is required for DEQ to utilize other scientifically valid methods for assessing attainment of the designated uses of the Chesapeake Bay.

### **Proposed Amendment**

The proposed amendment pertains to 9VAC25-260-185.D.3 of the WQS regulation, which describes how to perform the water quality assessment of criteria established to protect water quality in the Chesapeake Bay and its tidal tributaries. Currently, the text stipulates that the criteria shall be assessed “through comparison of the generated cumulative frequency distribution of the monitoring data to the applicable criteria reference curve for each designated use”. The proposed revised language would specify that Chesapeake Bay criteria can be assessed using the currently utilized CFD method, but also allow for alternative scientifically defensible methods. The proposed, amended language to 9VAC25-260-185.D.3. is presented below with underlines representing newly added language and strikethroughs representing language to be removed.

“Attainment of these criteria shall be assessed through any scientifically defensible assessment methods, which may include a comparison of the generated cumulative frequency distribution (CFD) of the monitoring data to the applicable criteria reference curve for each designated use. ~~If the monitoring data cumulative frequency curve is completely contained inside the reference curve, then the segment is in attainment of the designated use.~~ The reference curves and CFD procedures ~~to be followed~~ are published in the USEPA, Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903R03002, April 2003 and the 2004 (EPA 903R03002 October 2004), 2007 (CBP/TRS 285/07, EPA 903R07003), 2007 (CBP/TRS 288/07, EPA 903R07005), 2008 (CBP/TRS 29008, EPA 903R08001), 2010 (CBP/TRS 30110, EPA 903R10002), and 2017 (CBP/TRS 32017, EPA 903R17002) addenda. ~~An exception to this requirement is in measuring attainment of the SAV and water clarity acres, which are compared directly to the criteria.”~~

### **Attorney General Certification**

If approved to proceed with the proposed fast-track rulemaking, the Attorney General will provide authority for promulgation of these amendments during Executive Review of this fast-track amendment.

### **Presenter Contact Information**

Name: Bryant Thomas, Office of Ecology Manager  
Phone: (804) 396-5846  
Email: bryant.thomas@deq.virginia.gov

### **Attachments**

Attachments to this memo to aid in your review of these proposed regulatory amendments are as follows:

Attachment 1: Agency Background Document for the Proposed Fast-track Regulatory Amendment

Attachment 2: State Water Control Board, 9VAC25-260 Virginia Water Quality Standards, Amended Regulatory Language for Implementation Requirements For Criteria Specific to the Chesapeake Bay and Its Tidal Tributaries

# **ATTACHMENT 1**

## **Agency Background Document for the Proposed Fast-track Regulatory Amendment**



[townhall.virginia.gov](http://townhall.virginia.gov)

## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC25-260-185
<b>VAC Chapter title(s)</b>	Water Quality Standards
<b>Action title</b>	Modification of Implementation Requirements for Criteria Specific to the Chesapeake Bay and Its Tidal Tributaries (9VAC25-260-185)
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

To determine if the quality of Virginia's waters is clean enough to support the designated uses established in 9VAC25-260, Water Quality Standards (WQS), the Department of Environmental Quality (DEQ) analyzes the available monitoring data and biennially performs a water quality assessment which is contained in Virginia's 305(b)/303(d) Water Quality Assessment and Integrated Report. Whenever assessments indicate that a waterbody does not meet one or more water quality criteria, the waters are considered "impaired" and added to the state impaired waters list.

The proposed amendment pertains to 9 VAC 25-260-185.D.3 of the WQS regulation, which describes how to perform the water quality assessment of criteria established to protect water quality in the Chesapeake Bay and its tidal tributaries. Currently, the text stipulates that the criteria shall be assessed "through comparison of the generated cumulative frequency distribution of the monitoring data to the applicable criteria reference curve for each designated use", also known as a Cumulative Frequency

Distribution (CFD) methodology. The CFD approach has been used by the Chesapeake Bay Program Office since the early 2000s to assess water quality thresholds and criteria in the Chesapeake Bay and its tidal tributaries. This statistical tool allows criteria nonattainment to be expressed in terms of space and time, rather than just in time as more conventional tools do. However, the existing language in the WQS regulation limits which methods DEQ can use to assess criteria for dissolved oxygen and chlorophyll. One limitation of this existing regulatory language is that it limits Chesapeake Bay assessments to using only discrete datasets, excluding other types of available data collected from being applied to assessments. For example, water quality data collected using continuous monitoring instrumentation to collect high-frequency data are not compatible with the currently established CFD procedures. This limitation means that current CFD approach only allows for the assessment of three of the 11 applicable designated uses in the Chesapeake Bay and its tidal tributaries. Data currently exists to allow assessment of these additional designated uses using well-established assessment procedures.

The proposed revised language specifies that Chesapeake Bay criteria can be assessed using currently utilized CFD method, but also allows using alternative scientifically defensible methods. This proposed change is prompted by DEQ staff who believe that the proposed revision will provide greater flexibility for criteria implementation and make additional datasets available for Chesapeake Bay water quality assessments. This rulemaking is using a fast-track process because it is considered noncontroversial.

### Acronyms and Definitions

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

- DEQ – Department of Environmental Quality
- EPA - Environmental Protection Agency
- WQS – Water Quality Standards 9 VAC 25-260
- CFD – Cumulative Frequency Distribution

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

On June 25, 2024, the State Water Control Board:

1. Authorized DEQ to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) DEQ does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Authorized DEQ to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) DEQ does not find it necessary to make any changes to the proposal.

### Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

No specific mandates exist for this regulatory change. However, the proposed amendments to the regulation are necessary to allow the Department to apply scientifically valid assessment methodologies to underutilized water quality datasets and provide for greater flexibility and improved assessment capabilities when assessing Chesapeake Bay waters. Applying appropriate and scientifically based methods to assessments supports programs to improve water quality that protects human health and aquatic life in the Bay and its tidal tributaries, resulting healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic development, and commercial and recreational fishing industries utilized and enjoyed by their citizens.

### Legal Basis

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

The promulgating entity is the State Water Control Board (Board).

The Federal regulations at 40 CFR 131 authorize requirements and procedures for developing, reviewing, revising, and approving water quality standards by the States as authorized by section 303(c) of the Clean Water Act. 40 CFR 131 specifically requires the states to adopt criteria to protect designated uses.

The purpose of the State Water Control Law (Code of Virginia) is established in §62.1-44.2 and includes protection and restoration of the quality of state waters, safeguarding clean waters from pollution, prevention and reduction of pollution and promotion of water conservation. The State Water Control Law at §62.1-44.15(3a) also requires the Board to establish standards of quality consistent with its purpose and to modify, amend or cancel any such standards or policies.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered pertain to implementation of established criteria to protect designated uses. The WQS regulation identifies the uses to be made of surface waters, referred to as designated uses, and establishes water quality criteria to protect the designated uses. The amendments to the WQS under consideration will allow greater use of existing and future water quality monitoring data to evaluate the health of the Chesapeake Bay and its tidal tributaries in meeting the existing designated uses.

The authority to adopt standards as provided by the provisions in the previously referenced citations is mandated, although the specific standards to be adopted or modified as well as procedures for implementing the WQS are discretionary for the state.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

DEQ staff have identified a need for greater flexibility to utilize scientifically defensible water quality criteria assessment methodologies for the Chesapeake Bay and its tidal tributaries. DEQ analyzes available monitoring data and biennially performs a water quality assessment. Whenever assessments indicate that a waterbody does not meet one or more water quality criteria, according to established DEQ guidelines, or fails to support a designated use, the waters are considered “impaired” and are added to the state impaired waters list.

The proposed amendment pertains to 9 VAC 25-260-185.D.3 of the WQS regulation, which describes how to perform the water quality assessment of criteria established to protect water quality in the Chesapeake Bay and its tidal tributaries. Currently, the text stipulates that the criteria shall be assessed “through comparison of the generated cumulative frequency distribution of the monitoring data to the applicable criteria reference curve for each designated use”. This existing regulatory language limits Chesapeake Bay dissolved oxygen criteria assessments to using only discrete datasets, excluding available monitoring datasets composed of state-of-the-art automated, continuous, and high frequency data collection from being applied to assessments. The proposed revised language would specify that Chesapeake Bay criteria can be assessed using the currently utilized method, but also allowing for alternate scientifically defensible methods. DEQ publishes a Water Quality Assessment Guidance Manual biannually for public review which would outline the methods chosen for Chesapeake Bay assessments. This proposed change is prompted by DEQ staff who believe that the proposed revision will provide greater flexibility for criteria implementation and make additional datasets available for Chesapeake Bay water quality assessments. Applying appropriate and scientifically based methods contribute to improved water quality assessment procedures which will protect human health and aquatic life in the Bay and its tidal tributaries, resulting healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic development, and commercial and recreational fishing industries utilized and enjoyed by their citizens.

**Substance**

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

The proposed substantive amendment to section 9VAC25-260-185.D.3 of the State’s Water Quality Standards is the addition of language that allows for the criteria for the Chesapeake Bay and its tidal tributaries to be assessed using alternative scientifically defensible methods other than the CFD methodology. Language that specifies that only the CFD methodology must be used for assessment purposes has been removed.

**Issues**

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

The primary advantage to the public is that this amendment allows DEQ to improve its capabilities for assessing attainment of designated uses and water quality to protect human health and aquatic life in the

Chesapeake Bay and its tidal waters. There are no primary disadvantages to the public. The primary advantage to the agency and the Commonwealth is the ability to efficiently utilize already available data and apply improved methods for assessing attainment of designated uses in the Chesapeake Bay. There is no disadvantage to the agency or the Commonwealth that will result from the adoption of this amendment.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

The proposed amendment does not exceed applicable federal minimum requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

There is no locality particularly affected by the incorporation of the assessment protocols.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>The proposed regulatory amendment should not cause any additional financial impact to the state. This amendment is an update of existing rules and it will not take additional staff or resources to apply different water quality assessments protocols. The assessment program is funded by EPA 106 grants as well as State general fund budget.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>It is not expected that this adjustment to assessment protocol will impose a cost on other state agencies.</p>

<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The benefits related to properly assessing water quality in the Chesapeake Bay are indirectly related to state agencies.
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**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

Projected costs, savings, fees or revenues resulting from the regulatory change.	It is not expected that this adjustment to assessment protocol will impose a cost on localities.
Benefits the regulatory change is designed to produce.	Enhanced ability to report on progress towards meeting water quality standards in Chesapeake Bay and its tidal tributaries.

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	It is not expected that this adjustment to assessment protocol will impose a cost on other entities.
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	
Benefits the regulatory change is designed to produce.	Enhanced ability to report on progress towards meeting water quality standards in Chesapeake Bay and its tidal tributaries.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

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This analysis was reported on Tables 1b and 1c of the ORM Economic Impact form and is not reported here.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### **Regulatory Flexibility Analysis**

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

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This analysis was reported on Tables 1b and 1c of the ORM Economic Impact form and is not reported here.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### **Public Participation**

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

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If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The State Water Control Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document

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 reported, 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 through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Tish Robertson, Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218, email: [tish.robertson@deq.virginia.gov](mailto:tish.robertson@deq.virginia.gov), phone: (804)659-1295. In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-260-185.D.3		3. Attainment of these criteria shall be assessed through comparison of the generated cumulative frequency distribution of the monitoring data to the applicable criteria reference curve for each designated use. If the monitoring data cumulative frequency curve is completely contained inside the reference curve, then the segment is in attainment of the designated use. The reference curves and procedures to be followed are published in the USEPA, Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903-R-03-	3. Attainment of these criteria shall be assessed through <u>any scientifically defensible assessment methods, which may include a comparison of the generated cumulative frequency distribution (CFD) of the monitoring data to the applicable criteria reference curve for each designated use. If the monitoring data cumulative frequency curve is completely contained inside the reference curve, then the segment is in attainment of the designated use.</u> The reference curves and <u>CFD</u> procedures <del>to be followed</del> are published in the USEPA, Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903R03002, April 2003 and the 2004

		<p>002, April 2003 and the 2004 (EPA 903-R-03-002 October 2004), 2007 (CBP/TRS 285/07, EPA 903-R-07-003), 2007 (CBP/TRS 288/07, EPA 903-R-07-005), 2008 (CBP/TRS 290-08, EPA 903-R-08-001), 2010 (CBP/TRS 301-10, EPA 903-R-10-002), and 2017 (CBP/TRS 320-17, EPA 903-R-17-002) addenda. An exception to this requirement is in measuring attainment of the SAV and water clarity acres, which are compared directly to the criteria.</p>	<p>(EPA 903R03002 October 2004), 2007 (CBP/TRS 285/07, EPA 903R07003), 2007 (CBP/TRS 288/07, EPA 903R07005), 2008 (CBP/TRS 29008, EPA 903R08001), 2010 (CBP/TRS 30110, EPA 903R10002), and 2017 (CBP/TRS 32017, EPA 903R17002) addenda. <del>An exception to this requirement is in measuring attainment of the SAV and water clarity acres, which are compared directly to the criteria.</del></p>

**Family Impact**

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

No impact on the institution of the family and family stability is anticipated because of the incorporation of the protocols. Improved water quality is expected to improve the institution of the family by protecting human health and aquatic life, resulting healthier fisheries, safer and reliable public water supplies, and contribute to economic benefits from tourism, economic development, and producing edible and marketable natural resources, such as by commercial and recreational fishing industries.

## **ATTACHMENT 2**

**State Water Control Board, 9VAC25-260 Virginia Water Quality Standards  
Amended Regulatory Language for Implementation Requirements For Criteria Specific to  
the Chesapeake Bay and Its Tidal Tributaries**

**Project 7870 - Fast-Track**

**State Water Control Board**

**Fast-track-Modification of Implementation Requirements For Criteria Specific to the Chesapeake Bay and Its Tidal Tributaries**

1 **9VAC25-260-185. Criteria to protect designated uses from the impacts of nutrients and**  
 2 **suspended sediment in the Chesapeake Bay and its tidal tributaries.**

3 A. Dissolved oxygen. The dissolved oxygen criteria in the following table apply to all  
 4 Chesapeake Bay waters according to their specified designated use and supersede the dissolved  
 5 oxygen criteria in 9VAC25-260-50.

Designated Use	Criteria Concentration/Duration	Temporal Application
Migratory fish spawning and nursery	7-day mean $\geq$ 6 mg/l (tidal habitats with 0-0.5 ppt salinity)	February 1 - May 31
	Instantaneous minimum $\geq$ 5 mg/l	
Open water <sup>1</sup>	30-day mean $\geq$ 5.5 mg/l (tidal habitats with 0-0.5 ppt salinity)	year-round <sup>2</sup>
	30-day mean $\geq$ 5 mg/l (tidal habitats with > 0.5 ppt salinity)	
	7-day mean $\geq$ 4 mg/l	
	Instantaneous minimum $\geq$ 3.2 mg/l at temperatures < 29°C Instantaneous minimum $\geq$ 4.3 mg/l at temperatures $\geq$ 29°C	
Deep water	30-day mean $\geq$ 3 mg/l	June 1 - September 30
	1-day mean $\geq$ 2.3 mg/l	
	Instantaneous minimum $\geq$ 1.7 mg/l	
Deep channel	Instantaneous minimum $\geq$ 1 mg/l	June 1 - September 30

<sup>1</sup>In applying this open water instantaneous criterion to the Chesapeake Bay and its tidal tributaries where the existing water quality for dissolved oxygen exceeds an instantaneous minimum of 3.2 mg/l, that higher water quality for dissolved oxygen shall be provided antidegradation protection in accordance with 9VAC25-260-30 A 2.

<sup>2</sup>Open-water dissolved oxygen criteria attainment is assessed separately over two time periods: summer (June 1- September 30) and nonsummer (October 1-May 31) months.

6 B. Submerged aquatic vegetation (SAV) and water clarity. Attainment of the shallow-water  
 7 submerged aquatic vegetation designated use shall be determined using any one of the following  
 8 criteria:

Designated Use	Chesapeake Bay Program Segment	SAV Acres <sup>1</sup>	Percent Light-Through-Water <sup>2</sup>	Water Clarity Acres <sup>1</sup>	Temporal Application
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Shallow water submerged aquatic vegetation use	CB5MH	7,633	22%	14,514	April 1 - October 31
	CB6PH	1,267	22%	3,168	March 1 - November 30
	CB7PH	15,107	22%	34,085	March 1 - November 30
	CB8PH	11	22%	28	March 1 - November 30
	POTTF	2,093	13%	5,233	April 1 - October 31
	POTOH	1,503	13%	3,758	April 1 - October 31
	POTMH	4,250	22%	10,625	April 1 - October 31
	RPPTF	66	13%	165	April 1 - October 31
	RPPOH	4	13%	10	April 1 - October 31
	RPPMH	5,380	22%	13,450	April 1 - October 31
	CRRMH	768	22%	1,920	April 1 - October 31
	PIAMH	3,479	22%	8,014	April 1 - October 31
	MPNTF	85	13%	213	April 1 - October 31
	MPNOH	-	-	-	-
	PMKTF	187	13%	468	April 1 - October 31
	PMKOH	-	-	-	-
	YRKMH	239	22%	598	April 1 - October 31
	YRKPH	2,793	22%	6,982	March 1 - November 30
	MOBPH	15,901	22%	33,990	March 1 - November 30
	JMSTF2	266	13%	665	April 1 - October 31
	JMSTF1	1,333	13%	3,332	April 1 - October 31
	APPTF	379	13%	948	April 1 - October 31
	JMSOH	15	13%	38	April 1 - October 31
	CHKOH	535	13%	1,338	April 1 - October 31
	JMSMH	531	22%	1,328	April 1 - October 31
	JMSPH	604	22%	1,510	March 1 - November 30
	WBEMH	-	-	-	-
	SBEMH	-	-	-	-

EBEMH	-	-	-	-
ELIPH	-	-	-	-
LYNPH	107	22%	268	March 1 - November 30
POCOH	-	-	-	-
POCMH	4,066	22%	9,368	April 1 - October 31
TANMH	13,579	22%	22,064	April 1 - October 31

<sup>1</sup>The assessment period for SAV and water clarity acres shall be the single best year in the most recent three consecutive years. When three consecutive years of data are not available, a minimum of three years within the data assessment window shall be used.

<sup>2</sup>Percent light-through-water =  $100e^{-K_d Z}$  where  $K_d$  is water column light attenuation coefficient and can be measured directly or converted from a measured secchi depth where  $K_d = 1.45/\text{secchi depth}$ .  $Z$  = depth at location of measurement of  $K_d$ .

9 C. Chlorophyll a.

Designated Use	Chlorophyll a Narrative Criterion	Temporal Application
Open water	Concentrations of chlorophyll a in free-floating microscopic aquatic plants (algae) shall not exceed levels that result in undesirable or nuisance aquatic plant life or render tidal waters unsuitable for the propagation and growth of a balanced, indigenous population of aquatic life or otherwise result in ecologically undesirable water quality conditions such as reduced water clarity, low dissolved oxygen, food supply imbalances, proliferation of species deemed potentially harmful to aquatic life or humans, or aesthetically objectionable conditions.	March 1 - September 30

See 9VAC25-260-310 special standard bb for numerical chlorophyll criteria for the tidal James River.

10 D. Implementation.

11 1. Chesapeake Bay program segmentation scheme as described in Chesapeake Bay  
 12 Program, 2004 Chesapeake Bay Program Analytical Segmentation Scheme-Revisions,  
 13 Decisions and Rationales: 1983–2003, CBP/TRS 268/04, EPA 903-R-04-008,  
 14 Chesapeake Bay Program, Annapolis, Maryland, and the Chesapeake Bay Program  
 15 published 2005 addendum (CBP/TRS 278-06; EPA 903-R-05-004) is listed in the following  
 16 table and shall be used as the spatial assessment unit to determine attainment of the  
 17 criteria in this section for each designated use.

Chesapeake Bay Segment Description	Segment Name <sup>1</sup>	Chesapeake Bay Segment Description	Segment Name <sup>1</sup>
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Lower Central Chesapeake Bay	CB5MH	Mobjack Bay	MOBPH
Western Lower Chesapeake Bay	CB6PH	Upper Tidal Fresh James River	JMSTF2
Eastern Lower Chesapeake Bay	CB7PH	Lower Tidal Fresh James River	JMSTF1
Mouth of the Chesapeake Bay	CB8PH	Appomattox River	APPTF
Upper Potomac River	POTTF	Middle James River	JMSOH
Middle Potomac River	POTOH	Chickahominy River	CHKOH
Lower Potomac River	POTMH	Lower James River	JMSMH
Upper Rappahannock River	RPPTF	Mouth of the James River	JMSPH
Middle Rappahannock River	RPPOH	Western Branch Elizabeth River	WBEMH
Lower Rappahannock River	RPPMH	Southern Branch Elizabeth River	SBEMH
Corrotoman River	CRRMH	Eastern Branch Elizabeth River	EBEMH
Piankatank River	PIAMH	Lafayette River	LAFMH
Upper Mattaponi River	MPNTF	Mouth of the Elizabeth River	ELIPH
Lower Mattaponi River	MPNOH	Lynnhaven River	LYNPH
Upper Pamunkey River	PMKTF	Middle Pocomoke River	POCOH
Lower Pamunkey River	PMKOH	Lower Pocomoke River	POCMH
Middle York River	YRKMH	Tangier Sound	TANMH
Lower York River	YRKPH		

<sup>1</sup>First three letters of segment name represent Chesapeake Bay segment description, letters four and five represent the salinity regime of that segment (TF = Tidal Fresh, OH = Oligohaline, MH = Mesohaline, and PH = Polyhaline) and a sixth space is reserved for subdivisions of that segment.

- 18 2. The assessment period shall be the most recent three consecutive years. When three  
19 consecutive years of data are not available, a minimum of three years within the data  
20 assessment window shall be used.
- 21 3. Attainment of these criteria shall be assessed through any scientifically defensible  
22 assessment methods, which may include a comparison of the generated cumulative  
23 frequency distribution (CFD) of the monitoring data to the applicable criteria reference  
24 curve for each designated use. ~~If the monitoring data cumulative frequency curve is~~  
25 ~~completely contained inside the reference curve, then the segment is in attainment of the~~  
26 ~~designated use.~~ The reference curves and CFD procedures ~~to be followed~~ are published  
27 in the USEPA, Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and

28 Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries, EPA 903R03002, April  
29 2003 and the 2004 (EPA 903R03002 October 2004), 2007 (CBP/TRS 285/07, EPA  
30 903R07003), 2007 (CBP/TRS 288/07, EPA 903R07005), 2008 (CBP/TRS 29008, EPA  
31 903R08001), 2010 (CBP/TRS 30110, EPA 903R10002), and 2017 (CBP/TRS 32017, EPA  
32 903R17002) addenda. ~~An exception to this requirement is in measuring attainment of the  
33 SAV and water clarity acres, which are compared directly to the criteria.~~

34

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-260-185
<b>VAC Chapter title(s)</b>	Water Quality Standards
<b>Action title</b>	Modification of Implementation Requirements for Criteria Specific to the Chesapeake Bay and Its Tidal Tributaries (9VAC25-260-185)
<b>Date this document prepared</b>	4/2/2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Fast Track Rulemaking

**Cost Benefit Analysis**

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

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

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

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Background:</b> To determine if the quality of Virginia’s waters support designated uses established in 9 VAC 25-260, Water Quality Standards (WQS), the Department of Environmental Quality (DEQ) analyzes the available monitoring data and biennially performs a water quality assessment. Designated uses refer to intended purpose of a water body, such as recreation, aquatic life; wildlife; and producing edible and marketable</p>
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natural resources. Whenever assessments indicate that a waterbody does not meet one or more water quality criteria, the waters are considered “impaired” since they are not meeting an intended designated use. The waters are then added to the states impaired waters list.

The proposed amendment pertains to 9 VAC 25-260-185.D(3) of the WQS regulation, which describes how to perform the water quality assessment of criteria established to protect water quality in the Chesapeake Bay and its tidal tributaries. Currently, the text stipulates that the criteria shall be assessed “through comparison of the generated cumulative frequency distribution of the monitoring data to the applicable criteria reference curve for each designated use”, also known as a Cumulative Frequency Distribution (CFD) methodology. This language limits which methods DEQ can use to assess dissolved oxygen and chlorophyll criteria established in the WQS to assess designated uses in the Chesapeake Bay. One implication of this existing regulatory language is that it limits Chesapeake Bay assessments to using only discrete datasets, excluding other types of available data from being applied to assessments such as continuous data. The proposed revised language specifies that Chesapeake Bay criteria can continue to be assessed using CFD methodology, but also allows for using alternate scientifically defensible methods. This proposed change is prompted by recommendations from DEQ staff who believe that the proposed revision will provide greater flexibility for criteria implementation and make additional datasets available for Chesapeake Bay water quality assessments. This rulemaking is using a fast-track process because it is considered noncontroversial.

**Direct Costs:**

There are no anticipated direct economic costs resulting from the regulatory change.

**Indirect Costs:**

There are no anticipated indirect costs. This amendment is update of existing rules and it will not take additional staff or resources to apply different water quality assessments protocols. The proposed modification would provide DEQ with more flexibility when implementing Chesapeake Bay criteria.

**Direct Benefits:**

There are no direct economic benefits.

**Indirect Benefits:**

The proposed modification enhances DEQ’s ability to assess water quality by using all available data in Chesapeake Bay criteria assessments. Currently, regulatory language limits assessments to using

	<p>only discrete datasets, excluding available monitoring datasets from state of the art automated, continuous, and high frequency data collection. The proposed revised language would allow for Chesapeake Bay criteria to be assessed using the currently utilized method and also allow for alternate scientifically defensible methods. This change expands the use of existing datasets beyond a limited set of water quality criteria. Acquiring these data cost an estimated \$2.5 million from state and federal funds annually. Maximizing the data use provides a better return on this investment.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) This change expands the use of existing datasets beyond a limited set of water quality criteria. Acquiring these data cost an estimated \$2.5 million from state and federal funds annually. Maximizing the data use provides a better return on this investment.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	DEQ Water Planning Division water monitoring budget; federal 117(e) grant award.	

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> There are no direct costs associated with maintaining the status quo.</p> <p><b>Indirect Costs:</b> The Commonwealth is not realizing the full benefit of its annual \$2.5 million investment into tidal water monitoring in the Chesapeake Bay watershed in that high frequency, continuous monitoring datasets cannot be used for Chesapeake Bay assessments. Currently, the continuous monitoring data is only used for pH criteria assessments because current regulatory language specifies the assessment methodology which excludes their use from Chesapeake Bay-specific criteria assessments. Dissolved oxygen is currently not assessed utilizing all available data.</p> <p><b>Direct Benefits:</b> There are no direct benefits maintaining the status quo.</p>
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	<b>Indirect Benefits:</b> There are no direct benefits to maintaining the status quo.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) None.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	DEQ Water Planning Division water monitoring budget; federal 117(e) grant award.	

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>No alternative to this regulatory change was considered aside from maintaining the status quo and leaving the regulation unchanged as the change is considered noncontroversial. Since the current regulations requires use of the CFD methodology, regulatory change is required for DEQ to utilize other scientifically valid methods for performing water quality assessments in the tidal waters of the Chesapeake Bay watershed in Virginia. DEQ staff have determined the proposed revision will provide greater flexibility to assess the established water quality criteria specific to the Chesapeake Bay as established in 9VAC25-260-185.</p> <p><b>Direct Costs:</b> NA</p> <p><b>Indirect Costs:</b> NA</p> <p><b>Direct Benefits:</b> NA</p> <p><b>Indirect Benefits:</b> NA</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A

(3) Net Monetized Benefit	N/A
(4) Other Costs & Benefits (Non-Monetized)	N/A
(5) Information Sources	N/A

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> The proposed modification would not cause direct costs to local partners.</p> <p><b>Indirect Costs:</b> The proposed modification would not cause indirect costs to local partners.</p> <p><b>Direct Benefits:</b> The proposed modification would not cause direct benefits to local partners.</p> <p><b>Indirect Benefits:</b> The proposed modification would increase the utility of local partner datasets and gives DEQ more capability to evaluate Chesapeake Bay TMDL implementation, which is driven mainly by local partner efforts.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None.	(b) The proposed modification would increase the utility of local partner datasets and gives DEQ more capability to evaluate Chesapeake Bay TMDL implementation.
(3) Other Costs & Benefits (Non-Monetized)	Indeterminate but clearly positive.	

(4) Assistance	N/A
(5) Information Sources	See Table 1a.

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> It is not anticipated that the proposed modification will have direct costs on the institution of the family and family stability.</p> <p><b>Indirect Costs:</b> It is not anticipated that the proposed modification will have indirect costs on the institution of the family and family stability.</p> <p><b>Direct Benefits:</b> It is not anticipated that the proposed modification will have direct benefit on the institution of the family and family stability.</p> <p><b>Indirect Benefits:</b> It is not anticipated that the proposed modification will have indirect benefit on the institution of the family and family stability.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Information Sources	N/A	

**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p><b>Direct Costs:</b> It is not anticipated that the proposed modification will have direct costs on small businesses.</p> <p><b>Indirect Costs:</b> It is not anticipated that the proposed modification will have indirect costs on small businesses.</p> <p><b>Direct Benefits:</b> It is not anticipated that the proposed modification will have direct benefits on small businesses.</p> <p><b>Indirect Benefits:</b> It is not anticipated that the proposed modification will have indirect benefits on small businesses.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct &amp; Indirect Costs</p>	<p>Direct &amp; Indirect Benefits</p>
	<p>(a) N/A</p>	<p>(b) N/A</p>
<p>(3) Other Costs &amp; Benefits (Non-Monetized)</p>	<p>N/A</p>	
<p>(4) Alternatives</p>	<p>N/A</p>	
<p>(5) Information Sources</p>	<p>N/A</p>	

**Changes to Number of Regulatory Requirements**

**Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

*Change in Regulatory Requirements*

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-260-185	(M/A):	7	0	0	0
	(D/A):	1	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
<b>Grand Total of Changes in Requirements:</b>					(M/A):0 (D/A):0 (M/R):0 (D/R):0

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Cost Reductions or Increases (if applicable)*

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
NA				

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

VAC Section(s) Involved*	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden
9VAC25-260-185	Existing regulatory language limits Chesapeake Bay assessments to using only discrete datasets, excluding other types of available data	The proposed modification enhances DEQ's ability to assess water quality by using all available data in Chesapeake Bay criteria

	<p>from being applied to assessments such as continuous data.</p>	<p>assessments. Currently, regulatory language limits assessments to using only discrete datasets, excluding available monitoring datasets from state of the art automated, continuous, and high frequency data collection. The proposed revised language would allow for Chesapeake Bay criteria to be assessed using the currently utilized method and also allow for alternate scientifically defensible methods. This change expands the use of existing datasets beyond a limited set of water quality criteria. Acquiring these data cost an estimated \$2.5 million from state and federal funds annually. Maximizing the data use provides a better return on this investment.</p>

*Length of Guidance Documents (only applicable if guidance document is being revised)*

<b>Title of Guidance Document</b>	<b>Original Word Count</b>	<b>New Word Count</b>	<b>Net Change in Word Count</b>
NA			

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

**TAB I**



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

www.deq.virginia.gov

Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

**MEMORANDUM**

TO: State Water Control Board Members

FROM: Rebecca Rochet, Deputy Director, Division of Water Permitting *Rebecca Rochet*

DATE: June 5, 2024

SUBJECT: 9VAC25-875 – Amend and update the Virginia Erosion and Stormwater Management Regulation to update out of date requirements

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The intent of this fast-track regulatory action is to align the Virginia Erosion and Stormwater Management (VESM) Regulation<sup>i</sup> with the Department’s recently published guidance document, the Virginia Stormwater Management Handbook (Handbook).<sup>ii</sup> The Department requests the Board adopt amendments to the VESM Regulation to update requirements that are out of date and burdensome to the regulated community because they do not reflect current practices, technology, or data about land use and nutrient loading.

Out of date requirements that will be updated include:

- Removing March 1, 2011, specifications for 15 best management practices;
- Expanding and updating options for best management practices for water quality compliance that are included the Department’s recently issued Handbook;
- Updating the effective version of the Virginia Runoff Reduction Method (VRRM) so that it is based on current water quality models and nutrient loading data; and
- Updating the total phosphorus load of new development projects so that it accounts for decreased phosphorus use following the 2011 ban on phosphorus in lawn fertilizer.<sup>iii</sup>

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the regulated community and other stakeholders who have been involved in the process to adopt the VESM Regulation and develop the Virginia Stormwater Management Handbook have requested changes that reflect current practices, technology, and engineering methods.

Consistent with the Department’s recently published guidance documents for the VESM Regulation and Consolidation Bill – the Handbook and the VRRM, Spreadsheets and User’s

Guide, Version 4.1<sup>iv</sup> – the fast-track regulatory action will have a delayed effective date of July 1, 2025. Until July 1, 2025, the Department will accept plans and specifications developed using either 1) version 3.0 of VRRM and the methods and best management practices that have been in place, allowing owners, planners, and developers time to transition to the updated requirements for water quality and quantity protection or 2) version 4.1 of VRRM and the methods and best management practices in the new Handbook.

Amendments to the regulation and the Agency Background Document (Form TH-04) are attached. Detailed changes to the VESM Regulation are listed in the TH-04 and described generally below.

Updating requirements that are out of date and burdensome to the regulated community:

- 9VAC25-875-580 A 1
  - Updates the maximum the total phosphorus load of new development projects to 0.26 pounds per acre per year, as calculated pursuant to 9VAC25-875-590. This revision reflects more accurate and realistic phosphorus loading in the Chesapeake Bay Watershed. It is also in response to requirements to periodically review the standards.<sup>v</sup>
- 9VAC25-875-590 B
  - Cites the Virginia Stormwater Management Handbook as the source for specifications for BMPs that are approved to effectively reduce the phosphorus loading in conjunction with the updated Virginia Runoff Reduction Method and new development phosphorus nutrient target load.
- Documents Incorporated by Reference (9VAC25-875)
  - Updates the Documents Incorporated by Reference to include the most recent version of the Instructions and Documentation for the Virginia Runoff Reduction Method (VRRM) (April 27, 2024).

The Office of the Attorney General will be sent the final regulation for certification of statutory authority.

Attachments: Text of Regulatory Amendment, Agency Background Document (TH-04), ORM Economic Review Form

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<sup>i</sup> 9VAC25-875, effective July 1, 2024.

<sup>ii</sup> GM24-2001, available here: <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=7706>

<sup>iii</sup> 2011 Acts of Assembly Chapter 341.

<sup>iv</sup> GM24-2002, available here: <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=7707>

<sup>v</sup> Initiative 48 in the Commonwealth of Virginia Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP) requires DEQ to “initiate a review of the post-development water quality design criteria requirements established under the Virginia Stormwater Management Program (VSMP) Regulation, 9VAC25-870-63.”

1 Fast-Track Regulatory Action - 9VAC25-875 – Amend and update the Virginia Erosion and  
2 Stormwater Management Regulation to update out of date requirements - for June 25, 2024  
3 State Water Control Board meeting (RIS Project 7962)

4  
5  
6 **9VAC25-875-580. Water quality design criteria requirements.**

7 A. In order to protect the quality of state waters and to control the discharge of stormwater  
8 pollutants from regulated activities, the following minimum design criteria and statewide standards  
9 for stormwater management shall be applied to the site.

10 1. New development.

11 For plans submitted on or after July 1, 2025 the total phosphorus load of new  
12 development projects shall not exceed ~~0.44~~ 0.26 pounds per acre per year, as calculated  
13 pursuant to 9VAC25-875-590.

14 2. Development on prior developed lands.

15 a. For land-disturbing activities disturbing greater than or equal to one acre that result  
16 in no net increase in impervious cover from the predevelopment condition, the total  
17 phosphorus load shall be reduced at least 20% below the predevelopment total  
18 phosphorus load.

19 b. For regulated land-disturbing activities disturbing less than one acre that result in  
20 no net increase in impervious cover from the predevelopment condition, the total  
21 phosphorus load shall be reduced at least 10% below the predevelopment total  
22 phosphorus load.

23 c. For land-disturbing activities that result in a net increase in impervious cover over  
24 the predevelopment condition, the design criteria for new development shall be applied  
25 to the increased impervious area. Depending on the area of disturbance, the criteria  
26 of subdivision 2 a or 2 b of this subsection shall be applied to the remainder of the site.

27 d. In lieu of subdivision 2 c of this subsection, the total phosphorus load of a linear  
28 development project occurring on prior developed lands shall be reduced 20% below  
29 the predevelopment total phosphorus load.

30 e. The total phosphorus load shall not be required to be reduced to below the  
31 applicable standard for new development unless a more stringent standard has been  
32 established by a locality.

33 B. Compliance with subsection A of this section shall be determined in accordance with  
34 9VAC25-875-590.

35 C. Nothing in this section shall prohibit a VESMP authority from establishing more stringent  
36 water quality design criteria requirements in accordance with § 62.1-44.15:33 of the Code of  
37 Virginia.

38  
39 **9VAC25-875-590. Water quality compliance.**

40 A. Compliance with the water quality design criteria set out in subdivisions A 1 and A 2 of  
41 9VAC25-875-580 shall be determined by utilizing the Virginia Runoff Reduction Method or  
42 another equivalent methodology that is approved by the department.

43 B. The BMPs listed in ~~this subsection~~ the Virginia Stormwater Management Handbook are  
44 approved for use as necessary to effectively reduce the phosphorus load and runoff volume in  
45 accordance with the Virginia Runoff Reduction Method. Other approved BMPs found through the  
46 Virginia Stormwater BMP Clearinghouse may also be utilized. Design specifications and the

47 pollutant removal efficiencies for all approved BMPs are found through the Virginia Stormwater  
48 Management Handbook and the Virginia Stormwater BMP Clearinghouse.

- 49 1. ~~Vegetated Roof (Version 2.3, March 1, 2011);~~
- 50 2. ~~Rooftop Disconnection (Version 1.9, March 1, 2011);~~
- 51 3. ~~Rainwater Harvesting (Version 1.9.5, March 1, 2011);~~
- 52 4. ~~Soil Amendments (Version 1.8, March 1, 2011);~~
- 53 5. ~~Permeable Pavement (Version 1.8, March 1, 2011);~~
- 54 6. ~~Grass Channel (Version 1.9, March 1, 2011);~~
- 55 7. ~~Bioretention (Version 1.9, March 1, 2011);~~
- 56 8. ~~Infiltration (Version 1.9, March 1, 2011);~~
- 57 9. ~~Dry Swale (Version 1.9, March 1, 2011);~~
- 58 10. ~~Wet Swale (Version 1.9, March 1, 2011);~~
- 59 11. ~~Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);~~
- 60 12. ~~Extended Detention Pond (Version 1.9, March 1, 2011);~~
- 61 13. ~~Filtering Practice (Version 1.8, March 1, 2011);~~
- 62 14. ~~Constructed Wetland (Version 1.9, March 1, 2011); and~~
- 63 15. ~~Wet Pond (Version 1.9, March 1, 2011).~~

64 C. Nonproprietary BMPs differing from those listed in subsection B of this section shall be  
65 reviewed and approved by the director in accordance with procedures established by the  
66 department.

67 D. Proprietary BMPs listed through the Virginia Stormwater BMP Clearinghouse are approved  
68 for use in accordance with the Virginia Runoff Reduction Method. Any proprietary BMP approved  
69 for use after July 1, 2020, must meet the requirements of § 62.1-44.15:28 A 9 of the Code of  
70 Virginia.

71 E. A VESMP authority may establish limitations on the use of specific BMPs in accordance  
72 with § 62.1-44.15:33 of the Code of Virginia.

73 F. The VESMP authority or department as the VSMP authority shall have the discretion to  
74 allow for application of the design criteria to each drainage area of the site. However, where a site  
75 drains to more than one HUC, the pollutant load reduction requirements shall be applied  
76 independently within each HUC unless reductions are achieved in accordance with a  
77 comprehensive watershed stormwater management plan in accordance with 9VAC25-875-660.

78 G. Offsite alternatives where allowed in accordance with 9VAC25-875-610 may be utilized to  
79 meet the design criteria of subsection A of 9VAC25-875-580.

80 H. Any publicly owned treatment works that is permitted under the watershed general VPDES  
81 permit pursuant to § 62.1-44.19:14 of the Code of Virginia and is constructing or expanding the  
82 treatment works, wastewater collection system, or other facility used for public wastewater utility  
83 operations may, in accordance with § 62.1-44.19:21.2 C of the Code of Virginia, permanently  
84 retire a portion of the publicly owned treatment works' wasteload allocation to meet the design  
85 criteria of subsection A of 9VAC25-875-580. Notice shall be given by such applicant to the VESMP  
86 authority and to the department.

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89

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- 91
- 92 Documents Incorporated by Reference (9VAC25-875)
- 93 Virginia Runoff Reduction Method: Instructions and Documentation, ~~version 3.0, March 28,~~  
94 ~~2011~~effective April 27, 2024
- 95 Virginia Erosion and Sediment Control Regulation Minimum Standard 19 in effect prior to July  
96 1, 2014
- 97



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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-875
<b>VAC Chapter title(s)</b>	Virginia Erosion and Stormwater Management Regulation
<b>Action title</b>	Amend and update the Virginia Erosion and Stormwater Management Regulation to remove out of date requirements
<b>Date this document prepared</b>	June 5, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The intent of this fast-track regulatory action is to align the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875, effective July 1, 2024) with the Virginia Stormwater Management Handbook (Handbook) by amending the VESM to update sections and requirements that are out of date and burdensome to the regulated community because they do not reflect current practices, technology, or data about land use and nutrient loading.

Out of date requirements that will be updated include:

- Removing March 1, 2011, specifications for 15 best management practices;
- Expanding and updating options for best management practices for water quality compliance that are included the Department's recently issued guidance document, the Virginia Stormwater Management Handbook;

- Updating the effective version of the Virginia Runoff Reduction Method so that it is based on current water quality models and nutrient loading data; and
- Updating the total phosphorus load of new development projects so that it accounts for decreased phosphorus use following the 2011 ban on phosphorus in lawn fertilizer. (Chapter 341 of the 2011 Acts of Assembly.)

The fast-track regulatory action will have a delayed effective date of July 1, 2025.

Until July 1, 2025, the Department will accept plans and specifications developed using either 1) version 3.0 of VRRM and the methods and best management practices that have been in place, allowing owners, planners, and developers time to transition to the updated requirements for water quality and quantity protection or 2) version 4.1 of VRRM and the methods and best management practices in the new Handbook.

### Acronyms and Definitions

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

- 
- BMP: Best management practice
  - DEQ (or Department): Department of Environmental Quality
  - TMDL: Total Maximum Daily Load
  - U.S. EPA: United States Environmental Protection Agency
  - VAC: Virginia Administrative Code
  - VESMP: Virginia Erosion and Stormwater Management Program
  - VESM Regulation: Virginia Erosion and Stormwater Management Regulation, 9VAC25-875
  - VRRM: Virginia Runoff Reduction Method
  - VSMP: Virginia Stormwater Management Program
  - WIP: Watershed Implementation Plan

### Statement of Final Agency Action

*Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.*

On June 25, 2024, the State Water Control Board:

1. Authorized DEQ to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) DEQ does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Authorized DEQ to set a delayed effective date of July 1, 2025 after the close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) DEQ does not find it necessary to make any changes to the proposal.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

Section 62.1-44.15:28 of the Code of Virginia (effective July 1, 2024) authorizes the Board to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any Virginia Erosion and Stormwater Management Program (VESMP) to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources; subsection 3 requires the Board’s regulations to be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services; and subsection 6 requires the regulations to establish water quality and water quantity technical criteria that shall be periodically modified as required in order to reflect current engineering methods.

The last substantive amendments to the water quality and water quantity technical requirements were in 2011. The proposed regulatory action is consistent with the requirements in the State Water Control Law for the Board to base its regulations on land use, soils, size of land area being disturbed, proximate water bodies and their characteristics, and to periodically modify its requirements in order to reflect current engineering methods – factors that have changed significantly since 2011.

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the regulated community and other stakeholders who have been involved in the process to adopt the Virginia Erosion and Stormwater Management Regulation, 9VAC25-875, and develop the Virginia Stormwater Management Handbook (Handbook) have requested changes to Chapter 875 to reflect current practices, technology and engineering methods. The revisions to the Virginia Runoff Reduction Method (VRRM) are a result of an evaluation performed by the Department in response to Initiative 48 in the Commonwealth of Virginia Chesapeake Bay Total Maximum Daily Load (TMDL) Phase III Watershed Implementation Plan (WIP) which required the Department to “initiate a review of the post-development water quality design criteria requirements established under [the Virginia Stormwater Management Program Regulation].” Initiative 48 further specifies that “The Commonwealth’s review will determine if the criteria continue to satisfy the offset requirement of the TMDL.” This evaluation resulted in an updated VRRM guidance document and a corresponding total phosphorus load for new development projects.

Because the Board could not adopt substantive changes as part of the rulemaking process under the Consolidation Bill, Chapters 68 and 758 of the 2016 Acts of Assembly, the limited scope of this rulemaking benefits the regulated community, localities, DEQ, and other stakeholders by updating outdated BMP specifications to those in the Handbook, and incorporating the current VRRM.

## Legal Basis

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

*promulgating agency to regulate this specific subject or program, as well as a reference to the agency’s overall regulatory authority.*

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Promulgating Entity

The promulgating entity for this regulation is the State Water Control Board.

State Requirements

Section 62.1-44.15 (3a) of the Code of Virginia (effective July 1, 2024) requires the Board to establish such standards of quality and policies for any state waters consistent with the general policy set forth in the State Water Control Law; subsection (5) requires the Board to issue, revoke, or amend certificates and land-disturbance approvals under prescribed conditions for (a) the discharge of sewage, stormwater, industrial wastes, and other wastes into or adjacent to state waters; and subsection (10) requires the Board to adopt such regulations as it deems necessary to enforce the general soil erosion control and stormwater management program and water quality management program of the Board in all or part of the Commonwealth.

Additional authority for the Board to adopt and amend regulations for erosion control and stormwater management is in § 62.1-44.15:28 as cited above.

**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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The proposed regulatory action protects water quality in the Commonwealth of Virginia which is essential to the health, safety and welfare of Virginia’s citizens and is needed in order to establish appropriate and necessary permitting requirements for discharges of stormwater. The regulation change is essential because current regulatory requirements are based on data and information that is over 15 years old and not reflective of current conditions or based on current understanding of conditions in the State’s watersheds. The goal of this regulatory action is to amend Chapter 875 by updating sections and requirements that are out of date and burdensome to the regulated community because they do not reflect current practices, technology, or data about climate, land use, and nutrient loading.

**Substance**

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

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Changes to the Virginia Erosion and Stormwater Management Regulation include updating compliance alternatives used to meet and demonstrate water quality and water quantity requirements (VRRM, total phosphorus load for new development, BMPs). The updates account for improvements in BMP methods and technology and better information about land use patterns and water quality in the Chesapeake Bay Watershed. They also reflect application of this data and information in the models that U.S. EPA and other researchers use to study, monitor, and predict conditions in the Chesapeake Bay and other watersheds in Virginia. Better information and updated techniques/BMPs allow the regulated community to use more effective, lower cost alternatives than the outdated requirements and specifications that were carried over from the Virginia Stormwater Management Regulation, 9VAC25-870, though the process of consolidating and adopting regulations under the Consolidation Bill.

The fast-track regulatory action will have a delayed effective date of July 1, 2025.

**Issues**

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

1. Public: There are no direct impacts on public health as the amendments update existing regulatory requirements so they reflect current technology, methods, and understanding of the sources and nutrient loads that impact water quality. There is a general advantage to the overall welfare of the public in that using better methods that better reflect current conditions produces more predictable, effective results, which in turn contributes to the efficient and effective functioning of government. There are no disadvantages to the public.

2. DEQ: The updates will allow DEQ and localities that implement erosion and stormwater management programs to have standards that are consistent with practices and equipment that planners, designers, and engineers are currently using, without having to evaluate proposals on a case-by-case basis since they are not incorporated in the current regulations. This is an advantage. There are no disadvantages to the agency or the Commonwealth.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

There are no applicable federal requirements and therefore no requirements that exceed federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

**Other State Agencies Particularly Affected**

There is no state agency which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other state agencies.

Localities Particularly Affected

There is no locality which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other localities.

Other Entities Particularly Affected

There is no entity which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other entities.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>The regulatory change will not result in any cost to DEQ.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>The regulatory change will not result in any cost to any state agency.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The direct benefit to state agencies of updating the VRRM allows stakeholders to benefit from and acknowledge reduced and more accurate levels of phosphorus runoff. The direct benefit of updating the BMP specifications is reduced confusion and up-to date specifications with additional best management practices, which will result in less staff time in reviewing, inspecting, and working through issues before and during construction.</p>

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

<p>Projected costs, savings, fees or revenues resulting from the regulatory change.</p>	<p>No impacts to any locality are anticipated.</p>
<p>Benefits the regulatory change is designed to produce.</p>	<p>ORM Economic Impact form, Table 2</p>

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	ORM Economic Impact form, Tables 1a, 3 and 4
Agency’s best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	ORM Economic Impact form, Tables 1a, 3 and 4
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	ORM Economic Impact form, Tables 1a, 3 and 4
Benefits the regulatory change is designed to produce.	Updating regulations to reflect the methods and equipment that are currently available and in use by the regulated community, which perform better for a lower cost in many cases; promotes the efficient and effective functioning of government.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

There are two alternatives to the changes that are proposed in this regulatory action. The first is to leave Chapter 875 unchanged, allowing planners, designers, and other stakeholders to continue to use the methods, best management practices, and precipitation data that they have been using for the last twenty plus years. This alternative is more burdensome to most stakeholders because they have to seek approval on a case-by-case basis (i.e., through a variance process that is set out in the regulation) for newer, more efficient, lower cost, or more effective best management practices that have been developed and put in use in Virginia and across the country, but are not included in the regulation, . With respect to determining compliance with water quality requirements by using the version of the VRRM that is in the regulation, in many cases, the total phosphorus load of new development projects (0.41 lbs/acre/yr) and

higher loading rates, particularly for impervious surfaces, results in requirements to remove more phosphorus than would be needed for compliance with the most current version of VRRM. This translates into larger best management practices and higher costs. The other alternative is to remove all specifications which would result in longer permitting times since there would not be consistent standards or practices, requiring more case-by-case determinations and inconsistent inspection, enforcement, and compliance among the many localities that implement erosion and stormwater management programs across the state.

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

There are no alternatives to this regulatory action other than (1) continuing to operate with the existing VRRM and design specifications with no updates or (2) delaying an update to the VRRM and the design specifications. However, the Stormwater Management Act (and Virginia Erosion and Stormwater Management Act, effective July 1, 2024) requires the Department to periodically modify minimum design criteria for measures to control nonpoint source pollution so they reflect current engineering methods (§ 62.1-44.15:28 A 2 of the Code of Virginia, recodified at § 62.1-44.15:28 6, effective July 1, 2024) and to review the water quality design criteria standards upon completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan (Phase III WIP) (9VAC25-870-63 C). The approval of the lower total phosphorus load of new development projects of 0.26 lbs/ac/yr would satisfy these requirements and is significantly overdue per the requirements in the law and regulations.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DEQ is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Rebecca Rochet, Deputy Director, Water Permitting Division, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218, or [Rebecca.Rochet@deq.virginia.gov](mailto:Rebecca.Rochet@deq.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-875-580 A 1		1. New Development. The total phosphorus load of new development projects shall not exceed 0.41 pounds per acre per year, as calculated pursuant to 9VAC25-875-590.	<p>1. New Development. <u>For plans submitted on or after July 1, 2025, the</u> <del>The</del> total phosphorus load of new development projects shall not exceed <del>0.41</del>0.26 pounds per acre per year, as calculated pursuant to 9VAC25-875-590.</p> <p>Updates maximum total phosphorus load of new development projects to 0.26 pounds per acre per year, as calculated pursuant to 9VAC25-875-590.</p> <p>This revision resulted from an evaluation performed in response to Initiative 48 in the Commonwealth of Virginia Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP), which requires DEQ to “initiate a review of the post-development water quality design criteria requirements established under [the Virginia Stormwater Management Program (VSMP) Regulation,] 9VAC25-870-63.” Initiative 48 further specifies that “The Commonwealth’s</p>

			<p>review will determine if the criteria continue to satisfy the offset requirement of the TMDL. Subsequent amendments to the [Regulation] may be necessary if the criteria are no longer consistent with the TMDL.” Pursuant to Initiative 48, DEQ has reviewed the latest outputs from the Chesapeake Bay Model and compared them with the Chesapeake Bay Phase III WIP to determine if use of the 0.41 lbs/ac/yr post-construction target should continue. This review included evaluating the latest loading rates from the Chesapeake Bay Model and making necessary modifications to the Virginia Runoff Reduction Model (VRRM) Version 3.0 spreadsheets. The evaluation utilized scenario data from the most recent model runs of the Chesapeake Bay Model, accessed using the Chesapeake Assessment and Scenario Tool (CAST) Version 2019, using both 2021 and 2025 (the Phase III WIP) data. The reevaluation resulted in a final phosphorus nutrient target of 0.26 lbs/ac/yr.</p>
<p>9VAC25-875-590 B</p>		<p>The BMPs listed in this subsection are approved for use as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method. Other approved BMPs found through the Virginia Stormwater BMP Clearinghouse may also be utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are found through the Virginia Stormwater BMP Clearinghouse.</p> <ol style="list-style-type: none"> <li>1. Vegetated Roof (Version 2.3, March 1, 2011);</li> <li>2. Rooftop Disconnection (Version 1.9, March 1, 2011);</li> <li>3. Rainwater Harvesting (Version 1.9.5, March 1, 2011);</li> </ol>	<p>The BMPs listed in <del>this subsection</del> <u>the Virginia Stormwater Management Handbook</u> are approved for use as necessary to effectively reduce the phosphorus load and runoff volume in accordance with the Virginia Runoff Reduction Method. Other approved BMPs found through the Virginia Stormwater BMP Clearinghouse may also be utilized. Design specifications and the pollutant removal efficiencies for all approved BMPs are found through the <u>Virginia Stormwater Management Handbook and the Virginia Stormwater BMP Clearinghouse</u>.</p> <ol style="list-style-type: none"> <li>1. <del>Vegetated Roof (Version 2.3, March 1, 2011);</del></li> <li>2. <del>Rooftop Disconnection (Version 1.9, March 1, 2011);</del></li> <li>3. <del>Rainwater Harvesting (Version 1.9.5, March 1, 2011);</del></li> <li>4. <del>Soil Amendments (Version 1.8, March 1, 2011);</del></li> <li>5. <del>Permeable Pavement (Version 1.8, March 1, 2011);</del></li> <li>6. <del>Grass Channel (Version 1.9, March 1, 2011);</del></li> </ol>

		<p>4. Soil Amendments (Version 1.8, March 1, 2011);</p> <p>5. Permeable Pavement (Version 1.8, March 1, 2011);</p> <p>6. Grass Channel (Version 1.9, March 1, 2011);</p> <p>7. Bioretention (Version 1.9, March 1, 2011);</p> <p>8. Infiltration (Version 1.9, March 1, 2011);</p> <p>9. Dry Swale (Version 1.9, March 1, 2011);</p> <p>10. Wet Swale (Version 1.9, March 1, 2011);</p> <p>11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);</p> <p>12. Extended Detention Pond (Version 1.9, March 1, 2011);</p> <p>13. Filtering Practice (Version 1.8, March 1, 2011);</p> <p>14. Constructed Wetland (Version 1.9, March 1, 2011); and</p> <p>15. Wet Pond (Version 1.9, March 1, 2011).</p>	<p><del>7. Bioretention (Version 1.9, March 1, 2011);</del></p> <p><del>8. Infiltration (Version 1.9, March 1, 2011);</del></p> <p><del>9. Dry Swale (Version 1.9, March 1, 2011);</del></p> <p><del>10. Wet Swale (Version 1.9, March 1, 2011);</del></p> <p><del>11. Sheet Flow to Filter/Open Space (Version 1.9, March 1, 2011);</del></p> <p><del>12. Extended Detention Pond (Version 1.9, March 1, 2011);</del></p> <p><del>13. Filtering Practice (Version 1.8, March 1, 2011);</del></p> <p><del>14. Constructed Wetland (Version 1.9, March 1, 2011); and</del></p> <p><del>15. Wet Pond (Version 1.9, March 1, 2011).</del></p> <p>This is a technical correction to update the location of the BMPs approved for the use as necessary to effectively reduce the phosphorus loading in conjunction with the updated Virginia Runoff Reduction Method and new development phosphorus nutrient target load.</p>
<p>Documents Incorporated by Reference (9VAC25-875)</p>		<p>Virginia Runoff Reduction Method: Instructions and Documentation, March 28, 2011</p>	<p>Virginia Runoff Reduction Method: Instructions and Documentation, <del>March 28, 2011</del> <u>effective April 27, 2024.</u></p> <p>This updates the Documents Incorporated by Reference to include the most recent version of the Instructions and Documentation for the VRRM. The Instructions and Documentation have been updated to reflect the change to 0.26 lb/acre/yr in 9VAC25-875-580 and other technical revisions to the model.</p>

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	Department of Environmental Quality (“Department”)
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC 25-875
<b>VAC Chapter title(s)</b>	Virginia Erosion and Stormwater Management Regulation
<b>Action title</b>	Amend and update the Virginia Erosion and Stormwater Management Regulation to remove out of date requirements
<b>Date this document prepared</b>	May 8, 2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Fast-Track Regulation

**Cost Benefit Analysis**

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

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

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

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b><u>Background</u></b></p> <p>Chapters 68 and 758 of the 2016 Acts of Assembly (the “Consolidation Bill”), as amended by Chapters 656 and 666 of the 2023 Acts of Assembly, combined requirements in the Stormwater Management Act and Erosion and Sediment Control Law to create the Virginia Erosion and Stormwater Management Act (effective July 1, 2024). The Consolidation Bill directed the State Water Control Board (Board) to adopt regulations – to permit, regulate, and control both erosion and</p>
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stormwater runoff – for the legislation to become effective. At its June 22, 2023 meeting, the Board approved final regulations that consolidated 9VAC25-840 (Erosion and Sediment Control Regulations), 9VAC25-850 (Erosion and Sediment Control and Stormwater Certification Regulations), and 9VAC25-870 (Virginia Stormwater Management Program Regulations) into a single regulatory chapter, the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). The Virginia Erosion and Stormwater Management (VESM) Regulation becomes effective July 1, 2024, concurrent with the effective date of the Consolidation Bill, as amended.

Consistent with the Notice of Intended Regulatory Action for Chapter 870 that was posted in the Virginia Register of Regulations on February 4, 2019, no substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria were part of the regulatory action that resulted in the Board’s adoption of Chapter 875. The intent of this regulatory action is to amend Chapter 875 by updating sections and requirements that are out of date and burdensome to the regulated community because they do not reflect current practices, technology, or data about land use and nutrient loading.

**Direct & Indirect Costs:**

The Virginia Erosion and Stormwater Management (VESM) Regulation revisions include updates to: (i) the Virginia Runoff Reduction Method (VRRM) so that it is based on current water quality models and nutrient loading data; (ii) the total phosphorus load of new development projects; and (iii) best management practices for water quality compliance. This action does not change the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. In addition, it does not change the technical requirements such as erosion and sediment control minimum standards and post-construction stormwater management criteria that protect public health and the environment. Therefore, there are no significant new direct or indirect costs associated with the proposed changes.

**Direct Benefits:**

The updates to the VRRM, total phosphorus load of new development projects, and best management practices for water quality compliance are expected to result in direct benefits to stakeholders and the Commonwealth. These benefits have been addressed in the ORM Economic Review Forms for the Handbook and VRRM and include the following when used in conjunction with amendments to the VESM Regulation:

- Allows stakeholders to use new post-development best management practices (BMPs) set out in the new Virginia Stormwater Management Handbook (Handbook), for meeting water quality criteria requirements;
- Allows stakeholders to use expanded and updated BMP specifications that are in the Handbook;
- Provides stakeholders the option of using a fourth land-cover criteria, mixed open, which offers a lower-cost alternative to achieve restoration of ground cover (as compared to re-establishing forest conditions);
- Reduces the total phosphorus load for new development so that it more accurately reflects (1) the projected mix of land to be developed in Virginia’s Chesapeake Bay watershed and accounts for reduced phosphorus loading that has resulted from the 2011 ban on phosphorus in lawn fertilizer (2011 Acts of Assembly Chapter 341); and (2) less phosphate runoff leaving construction sites and entering state waters, particularly the Chesapeake Bay and its watershed;
- The Handbook provides up-to-date specifications for BMPs which will allow more efficient review of plans and permit applications since users and regulators will both have the same information and expectations; and
- Significant time savings for planners, applicants, and reviewers.

The revisions to the VRRM (VRRM 4.1) are a result of an evaluation performed by the Department in response to Initiative 48 in the Commonwealth of Virginia Chesapeake Bay Total Maximum Daily Load (TMDL) Phase III Watershed Implementation Plan (WIP) which requires the Department to “initiate a review of the post-development water quality design criteria requirements established under the Stormwater Management Program (VSMP) Regulation.” Initiative 48 further specifies that “the Commonwealth’s review will determine if the criteria continue to satisfy the offset requirement of the TMDL.” This evaluation resulted in an updated VRRM guidance document and a corresponding total phosphorus load for new development projects.

The existing VRRM referenced in the documents incorporated by reference to the regulations (VRRM 1.0) and the updated version (VRRM 3.0) are both based on older, more limited selection of BMPs and a phosphorus (P) load of 0.41 pounds/acre/year (lbs/ac/yr). While this level is higher than the P load in the updated VRRM (0.26 lbs/ac/yr), modeling by the Department and the agency’s contractor (Virginia Tech) showed that the total phosphorus reduction for projects with moderate or higher levels of impervious cover is actually lower at the loading rate in VRRM 4.1, thus reducing the cost of typical multifamily and affordable housing projects. In addition, VRRM 4.1 provides additional lower cost

options for complying with the water quality technical criteria outlined in the VESM Regulation; thereby, lowering costs for site plan preparation, construction, and maintenance. The Department is unable to precisely quantify these benefits because the benefits are site specific since they depend on the soil type, land-use plan, and type of vegetative cover. However, modeling by Virginia Tech indicates requirements for onsite best management practices can be reduced by approximately five percent and the amount of offsite nutrient credits required may fall by as much as 50% or about 1000 pounds of total phosphorus per year. As noted in the ORM Economic Review Form for the VRRM, the current average market cost for a one-pound total phosphorus credit is \$15,000, resulting in an estimated cost savings of \$15 million per year.

The new BMP specifications are now included in the Virginia Stormwater Management Handbook (Handbook). The new Handbook will reduce confusion and uncertainty for stakeholders, Department staff, and local erosion and stormwater management program authorities about the specifications for multiple types of best management practices (i.e., their design, use, and maintenance), thereby lowering costs for site plans, plan review, and implementation. This will also allow faster plan development and review. The Department estimates this could result in at least a 30-day time savings, decreasing the current average permit review and approval process, which includes time for the applicant to make revisions and resubmit plans, from 155 days to 125 days.

**Indirect Benefits:**  
Updating the VRRM allows users and communities to benefit from and acknowledge reduced and more accurate levels of phosphorus runoff. The Department is unable to quantify these benefits because the benefits are site specific since they depend on the soil type, land-use plan, and type of vegetative cover. However, because the new VRRM indirectly encourages meadows or re-forestation instead of managed turf, maintenance costs may be reduced at a project site and environmental benefits (cleaner air and water) result from increased meadow and forest cover. In addition, moving to a single Handbook for implementation of the new laws (Consolidation Bill) and VESM Regulation will allow projects to go to construction sooner and take advantage of a wider selection of BMPs.

(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
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	(a) No monetized direct or indirect costs associated with these regulatory changes.	(b) The updated VRRM allows stakeholders to use new post-development best management practices (BMPs), as well as provides stakeholders with the option of using a fourth land-cover criteria that will help with linear infrastructure projects such as electrical power transmission lines. With this, the updated VRRM provides the regulated community with a lower-cost alternative to achieve restoration of ground cover and additional, less expensive BMP options for compliance; thereby, saving on design and construction costs. In addition, due to the update to the BMP specifications and the Handbook, local authorities and the Department will benefit from the amount of staff time saved working with consultants on issues that have been addressed in the expanded and updated BMP specifications in the Handbook. The Department is unable to quantify these benefits because the benefits are site specific since they depend on the soil type, land-use plan, and type of vegetative cover.
(3) Net Monetized Benefit	Incorporation of the updated BMP specifications in a new Handbook will also allow faster plan development and review, which the Department estimates will result in at least a 30-day time savings. Monetized – there is approximately \$28 billion/year in construction activity in Virginia. With an estimated 10% cost of debt and equity, this results in a savings of \$233 million/year.	
(4) Other Costs & Benefits (Non-Monetized)	Unknown (see discussion above).	
(5) Information Sources	Department permit records; communications with Department staff that worked for consulting firms that prepare and work with stormwater plans.	

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

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p><b>Direct Costs:</b>  The “status quo” option would be to continue to use existing specifications and manuals that were developed for the Virginia Erosion and Stormwater Management Regulations, 9VAC25-840, and Virginia Stormwater Management Program Regulation, 9VAC25-870, both of which are being repealed effective July 1, 2024, the date the VESM Regulation, 9VAC25-875, becomes effective. In addition, continuing to use the existing regulatory total phosphorus load of new development projects of 0.41 lbs/ac/yr will result in higher direct costs for stakeholders, relative to the lower proposed total phosphorus load of 0.26 lbs/ac/yr, for projects with moderate or higher levels of impervious cover. Projects with low amounts of impervious cover and high amounts of maintained lawn instead of forest or mixed open space will have slightly lower direct costs. No direct costs will be occurred by the Department.</p> <p><b>Indirect Costs:</b>  Maintaining the current regulatory total phosphorus load of new development projects of 0.41 lbs/ac/yr would have no indirect economic cost to regulated entities. In addition, continuing to use the existing specifications would lead to confusion among stakeholders and Department staff or local erosion and stormwater management program authorities that review and approve plans and permit applications for land-disturbing activities. The primary indirect costs with the “status quo” are the additional operator, consultant, Department, and local authority staff time to resolve plan review issues due to the inconsistencies between the VESM Regulation and the existing specifications and outdated manuals. The Department is unable to quantify these costs.</p> <p><b>Direct Benefits:</b>  Maintaining the current regulatory total phosphorus load of new development projects of 0.41 lbs/ac/yr would have negative direct economic benefits to regulated entities that develop projects with moderate or higher levels of impervious cover, and slightly positive benefits for projects with low amounts of impervious cover and high amounts of maintained lawn instead of forest or mixed open space. In addition, the primary direct benefit of not updating the BMP specifications referenced in the regulations is the continued construction and implementation of BMPs which are familiar to the design community, developers, contractors, plan reviewers, and inspectors. The Department is unable to quantify these benefits.</p> <p><b>Indirect Benefits:</b>  Maintaining the current regulatory total phosphorus load of new development projects of 0.41 lbs/ac/yr would have no indirect benefits to</p>
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	regulated entities. In addition, the use of the existing specifications and VRRM would save design consultants, operators, local authorities, and Department staff time and personnel costs associated with learning the updated VRRM and BMP specifications contained in the Handbook. With the “status quo” option, staff would continue to use, implement, review, and inspect the BMPs they have been using for the past 20-30 years. The Department is unable to quantify these benefits.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to monetize indirect costs associated with the status quo.	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	The Department is not aware of any alternatives to this regulatory change other than (1) continuing to operate with the existing VRRM and design specifications with no updates or (2) delaying an update to the VRRM and the design specifications. However, the Stormwater Management Act requires the Department to periodically modify minimum design criteria for measures to control nonpoint source pollution so they reflect current engineering methods (§ 62.1-44.15:28 A 2 of the Code of Virginia, recodified at § 62.1-44.15:28 6, effective July 1, 2024) and to review the water quality design criteria standards upon completion of the 2017 Chesapeake Bay Phase III Watershed Implementation Plan (Phase III WIP)(9VAC25-870-63 C). The approval of the lower total phosphorus load of new development projects of 0.26 lbs/ac/yr would satisfy these requirements and is significantly overdue per the requirements in the law and regulations.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	N/A	N/A

(3) Net Monetized Benefit	N/A
(4) Other Costs & Benefits (Non-Monetized)	N/A
(5) Information Sources	N/A

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p><b>Direct Costs:</b> There are no direct costs to local partners because this action does not change the existing responsibilities of local governments to implement erosion and sediment control and stormwater management programs consistent with requirements in the Stormwater Management Act and Erosion and Sediment Control Law (Chapters 2.3 and 2.4 of the State Water Control Law, Article 3.1 of Title 62.1 of the Code of Virginia).</p> <p><b>Indirect Costs:</b> The indirect costs associated with the proposed change are additional staff time necessary for local staff to attend training associated with the updated VRRM, BMP Design Specifications, and Handbook. The Department is unable to quantify these costs.</p> <p><b>Direct Benefits:</b> The direct benefit to local partners is up-to date specifications with additional BMPs, which will result in less staff time in reviewing, inspecting, and working through issues before and during construction.</p> <p><b>Indirect Benefits:</b> The indirect benefits associated with this change is that construction projects will be completed faster and with fewer delays caused by uncertainty, thus supporting economic growth within the locality.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct &amp; Indirect Costs (a) Unable to monetize direct and indirect costs.</p>	<p>Direct &amp; Indirect Benefits (b) Unable to monetize direct and indirect benefits.</p>

(3) Other Costs & Benefits (Non-Monetized)	N/A
(4) Assistance	N/A
(5) Information Sources	N/A

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> There are no direct costs that impact families associated with the proposed changes.</p> <p><b>Indirect Costs:</b> There are no indirect costs that impact families associated with the proposed changes.</p> <p><b>Direct Benefits:</b> There are no direct benefits that impact families associated with the proposed changes.</p> <p><b>Indirect Benefits:</b> There are no indirect benefits that impact families associated with the proposed changes.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Information Sources	N/A	

**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

(1) Direct & Indirect Costs & Benefits (Monetized)	Small businesses would have the same impact as described in 1a above. The department is unable to identify the number of small businesses that would benefit from this regulatory change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with the regulatory changes.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Alternatives	N/A	
(5) Information Sources	N/A	

**Changes to Number of Regulatory Requirements**

**Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

*Change in Regulatory Requirements*

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-875-580	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	7	0	0	0
	(D/R):	0	0	0	0
9VAC25-875-590	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	2	0	0	0
	(D/R):	0	0	0	0
Documents Incorporated by Reference	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	0	0	0	0
	(D/R):	0	0	0	0
				<b>Grand Total of Changes in Requirements:</b>	<b>(M/A):0</b>
					<b>(D/A):0</b>
					<b>(M/R):0</b>
					<b>(D/R): 0</b>

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Cost Reductions or Increases (if applicable)*

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
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<p>9VAC25-875-580 and Documents Incorporated by Reference</p>	<p>Water quality design criteria and compliance requirements are demonstrated through the use of the VRRM and post-construction best management practices. For VRRM 4.1, the Virginia Stormwater Management Handbook contains design specifications for the best management practices.</p>	<p>\$30 million/yr</p>	<p>\$15 million/yr*</p> <p>* This cost reduction has been quantified in the ORM Economic Review Form for VRRM 4.1. (Dated January 26, 2024)</p>	<p>Modeling by Virginia Tech indicates requirements for onsite best management practices can be reduced by approximately 5% and the amount of offsite nutrient credits required may fall by as much as 50% or about 1000 pounds of total phosphorus per year. The current average market cost for a one-pound phosphorus credit is \$15,000, resulting in an estimated cost savings of \$15 million per year.</p>

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<p><b>VAC Section(s) Involved*</b></p>	<p><b>Description of Regulatory Change</b></p>	<p><b>Overview of How It Reduces or Increases Regulatory Burden</b></p>
<p>9VAC25-875-590</p>	<p>The incorporation of the Virginia Stormwater Management Handbook and removal of 15 outdated specifications for best management practices will streamline the process to develop plans for compliance with the VESM Regulation. It also reduces the overall amount of time required for state and local approving authorities to review and approve submissions.</p>	<p>Incorporation of the updated BMP specifications in a new Handbook will also allow faster plan development and review, which the Department estimates will result in at least a 30-day time savings. Monetized – there is approximately \$28 billion/year in construction activity in Virginia. With an estimated 10% cost of debt and equity, this results in a savings of \$233 million/year.*</p>

		<p>The average time to obtain approval will decrease from 155 days to 125 days, which represents a 19% reduction.*</p> <p>* The reductions in the regulatory burden have explained and quantified in the ORM Economic Review Form for the Handbook (Dated January 26, 2024)</p>

*Length of Guidance Documents (only applicable if guidance document is being revised)*

<b>Title of Guidance Document</b>	<b>Original Length</b>	<b>New Length</b>	<b>Net Change in Length</b>
NA			

**TAB J**



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

**MEMORANDUM**

**TO:** State Water Control Board Members

**FROM:** Elizabeth Mckercher  
Director, Water Planning Division

**DATE:** May 10, 2024

**SUBJECT: Request to Proceed to Public Hearing and Comment on Proposed Amendments to the Water Quality Standards — Site-Specific Selenium Criteria**

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**Purpose**

On April 25, 2023, the Department of Environmental Quality (DEQ) received a petition from Clintwood JOD, LLC (CJOD) requesting that the State Water Control Board amend its Water Quality Standards (WQS) regulation (9VAC25-260) to include a site-specific freshwater aquatic life selenium criterion for several tributaries to Knox Creek in Buchanan County. Specifically, the petitioner requested the Board to amend the Virginia Water Quality Standards regulation (9VAC25-260 et. Seq.) to include the 2016 U.S. Environmental Protection Agency (EPA) recommended selenium water quality criterion for protection of aquatic life for four (4) specific streams, and their tributaries, in Buchanan County. The Board approved the staff recommendation to proceed with a rule-making consistent with the request of the petitioner at the August 23, 2023, Board meeting. Staff intends to ask the Board for approval to go to public hearing and comment on this amendment.

**Background**

This matter is before the Board due to a petition submitted by CJOD via a letter dated April 25, 2023, that requested promulgation of site-specific selenium (Se) aquatic life criteria for four streams which are tributaries to Knox Creek in Buchanan County, Virginia. The petition letter is provided as Attachment 1 to this memorandum. Knox Creek is a subwatershed of the Tug Fork

in the Tennessee/Big Sandy river basin. The Tug Fork flows north from Virginia into Kentucky and, subsequently, West Virginia. The specific streams included in the petition are:

1. Race Fork and tributaries (7.3 square mile drainage area or watershed)
2. Pounding Mill Creek and tributaries (1.4 square mile watershed)
3. Right Fork of Lester Fork and tributaries (5.8 square mile watershed)
4. Abners Fork and tributaries (1.7 square mile watershed)

Selenium is a naturally occurring element present in sedimentary rocks, shales, coal and phosphate deposits and soils. Selenium is a nutritionally essential element for animals in small amounts, but toxic at higher concentrations. Selenium bioaccumulates in the aquatic food chain and chronic exposure in fish and aquatic invertebrates can cause reproductive impairments (e.g., larval deformity or mortality) as well as adverse juvenile growth and mortality. Selenium is also toxic to animals that consume aquatic organisms containing excessive levels of selenium.

The petition provided the information required under the Code of Virginia §2.2-4007: *Petitions for new or amended regulations; opportunity for public comment*, and 9VAC25-11-60: *Petition for Rulemaking*. The petitioner requested the Board to amend the WQS regulation to include the U.S. Environmental Protection Agency (EPA) recommended selenium water quality criterion for protection of aquatic life for the streams noted above in the Knox Creek watershed. EPA's recommended criterion was published on July 13, 2016.

A comparison of EPA's recommended 2016 selenium criterion and Virginia's current selenium criterion is provided in Attachment 2. The 2016 EPA recommended selenium criterion is composed of four parts:

1. Two fish tissue elements:
  - a. selenium concentrations in egg-ovary, and
  - b. whole-body and/or muscle
2. Two water column elements:
  - a. 4-day average, and
  - b. intermittent exposure.

In addition to the request to promulgate updated site-specific selenium criteria, the petitioner asked that DEQ support utilizing EPA's criterion with any implementation guidance modeled after the West Virginia implementation guidance to provide consistency with the remainder of the downstream watershed. However, while implementation procedures are important, they are outside the scope of the rulemaking focused on developing amended regulatory language.

At its August 23, 2023, meeting, the Board authorized staff to proceed with a rulemaking to incorporate site-specific selenium criteria as a special standard in Virginia's Water Quality Standards regulation (9VAC25-260) consistent with the petition request for the streams identified in the Knox Creek drainage in Buchanan County. A Notice of Intended Regulatory Action (NOIRA) was published February 26, 2024. The NOIRA is available at: <https://townhall.virginia.gov/L/viewaction.cfm?actionid=6387>. A public comment period on the NOIRA was held between February 26 and March 27, 2024. Comments were received from

several organizations and individuals; a summary of the public comments received is provided in the Agency Background Document for the Proposed Regulation. The Agency Background Document is included as Attachment 3 to this memorandum. An ad hoc Regulatory Advisory Panel (RAP) consisting of eight (8) members was formed and one meeting was held on April 24, 2024. The RAP members and the organization represented by each member are presented in Attachment 4 of this memorandum. The meeting minutes from this meeting may be accessed online at:

[https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\103\39731\Minutes\\_DEQ\\_39731\\_v2.pdf](https://townhall.virginia.gov/L/GetFile.cfm?File=meeting\103\39731\Minutes_DEQ_39731_v2.pdf)

### **Proposed Amendments**

The following discussion summarizes the key section of the regulation proposed for amendment and provides background on the basis for the proposed updates. Additional details on the background, legal authority, purpose, impacts, issues and public comments associated with the proposed regulation is contained in the Agency Background Document which is included as Attachment 3. The proposed regulatory language to amend the WQS regulation is presented in Attachment 5. It should be noted that the RAP reached consensus on accepting the proposed regulatory language as contained in Attachment 5.

Part VII of the WQS regulation contains Special Standards and Requirements. Part IX of the WQS regulation contains River Basin Section Tables which provide details on river basins, subbasins, sections within each river basin or subbasin, and identification of any applicable special standards. The proposed regulatory amendments would be reflected in these sections of the regulation as described below.

#### **9VAC25-260-310. Special standards and requirements and; 9VAC25-260-490 Tennessee and Big Sandy River Basins (Big Sandy River Subbasin).**

This section contains a description of all site-specific criteria and the waters to which they apply. The special standards are identified and listed in order by alphabetic characters. The proposed special standard would replace the existing freshwater aquatic life selenium criteria with the 2016 EPA-recommended criteria for the following waters: Race Fork and tributaries, Pounding Mill Creek and tributaries, Right Fork of Lester Fork and tributaries, and Abners Fork and tributaries. The proposed, amended selenium criteria would be included as special standard “jj” in 9VAC25-260-310 and the notation “jj” placed in the special standards column of 9VAC25-260-490 section 3. This portion of the WQS regulation identifies 10 primary river basins in Virginia and describes the sections within each river basin and the water quality criteria which apply to the sections. This portion of the regulation specifies the classification of each river basin section, which may include, but is not limited to, identification of public water supply areas, trout water descriptions and swamp waters along with any special standards which apply to all or a portion of a section. If a section contains a special standard, 9VAC25-26-310 is referenced for a description of the special standard and the applicable area of the special standard. The proposed, amended language to add special standard “jj” to both sections of the WQS regulation is presented in Attachment 5.

### **Attorney General Certification**

These amendments have been forwarded to the Office of the Attorney General for agency statutory authority, but authority has not yet been granted. The amendments will be proposed "contingent upon Attorney General Office statutory authority" if not received by the June Board meeting.

**Presenter Contact Information**

Name: Bryant Thomas, Office of Ecology Manager  
Phone: (804) 396-5846  
Email: bryant.thomas@deq.virginia.gov

**Attachments**

Attachments to this memo to aid in review of these proposed regulatory amendments are as follows:

- Attachment 1: Petition Letter Requesting Site-specific Aquatic Life Ambient Criterion for Selenium
- Attachment 2: Comparison of EPA's 2016 selenium criterion and Virginia's current criteria
- Attachment 3: Agency Background Document for the Proposed Regulatory Amendment
- Attachment 4: Regulatory Advisory Panel representatives
- Attachment 5: State Water Control Board, 9VAC25-260 Virginia Water Quality Standards, Site-Specific Selenium Criteria Proposed Amendments

**Attachment 1**  
Petition Letter Requesting Site-specific Aquatic Life Ambient Criterion for Selenium



April 25, 2023

**VIA ELECTRONIC AND FIRST-CLASS MAIL**

Ms. Jutta Schneider – Director, Water Planning  
Virginia Department of Environmental Quality (DEQ)  
P.O. Box 1105  
Richmond, VA 23218

RE: Petition for Rulemaking  
Site-specific Aquatic Life Ambient Criterion for Selenium  
Virginia Portion of Knox Creek watershed  
Buchanan County, Virginia

Ms. Schneider:

Clintwood JOD, LLC (CJOD) is petitioning DEQ and the State Water Control Board to promulgate a site-specific aquatic life ambient criterion for selenium. We are requesting that this action be taken under the recognized authority of the State Water Control Board established by Virginia Code § 62.1-44.15 (State Water Control Law). This letter serves to provide DEQ with the information required by section 9 VAC 25-11-60 of the DEQ Public Participation Procedures.

**Petitioner**

*Name:* Clintwood JOD, LLC  
*Mailing Address:* P.O. Box 100  
Bekher, Kentucky 41513  
*Phone Number:* (606) 754-5010

**Requested Criterion**

Pursuant to Virginia Code § 2.2-4007, CJOD formally requests that DEQ amend the existing surface water quality criteria for selenium to allow a special standard (9VAC25-260-310) incorporating EPA's *Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater*, as published in the Federal Register on July 13, 2016 (Vol. 81, No. 134) and revised in August 2021, within the reaches defined below and depicted on Exhibit 1.

Clintwood JOD, LLC | PO Box 100, Bekher, KY 41513 | (606) 754-5010

[www.clintwoodjad.com](http://www.clintwoodjad.com)

Ms. Jutta Schneider  
April 25, 2023  
Page 2 of 3

All reaches included in this petition fall within Knox Creek, a sub watershed of the Tug Fork (HUC 05070201) that encompasses approximately 97.8 square miles of Buchanan County (19% of the county). Of note is that the Virginia portion of the Knox Creek watershed makes up 6.2 percent of the Tug Fork HUCB, with the remainder downstream in Kentucky and West Virginia.

<b>Proposed Reach</b>	<b>Watershed Size (mi<sup>2</sup>)</b>
Race Fork and Tributaries	7.3
Pounding Mill Creek and Tributaries	1.4
Right Fork of Lester Fork and Tributaries	5.8
Abners Fork and Tributaries	1.7

#### **Interest in Proposed Action**

CJOD currently holds and operates fifteen (15) surface and deep-mining permits in the Commonwealth of Virginia under its Coal Surface Mining Reclamation Regulations (4VAC25-130). Each of these operations is also authorized under an NPDES permit issued by Virginia Department of Energy's Mined Land Repurposing Division with oversight by EPA. Six (6) of CJOD's operations are currently permitted to discharge into the reaches defined above, one of which is currently under a schedule of compliance for selenium. As these mining operations are permitted activities that generate its primary source of revenue, CJOD has an interest in the proposed action.

#### **Statement of Need and Justification**

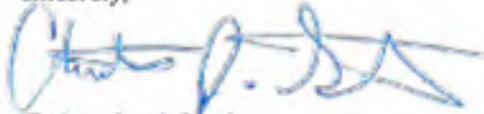
As stated above, CJOD's need for the proposed amendment is directly related to the continuation of its mining operations. Virginia's current water quality criteria for selenium are over 30 years old. EPA's recommended criteria reflect the latest scientific knowledge and provide a more updated method of evaluating selenium impacts to surface waters.

Additional considerations when evaluating the requested amendment are standards associated with downstream waters. The most downstream reach requested for consideration is Race Fork. The confluence of Race Fork and Knox Creek is approximately 3.9 stream miles from Kentucky and 11.8 stream miles from West Virginia. Both Kentucky and West Virginia have established aquatic life ambient water quality criteria that were modeled after EPA's recommended criterion. If the petition is found to be reasonable, we would ask that DEQ support utilizing EPA's criterion with any implementation guidance modeled after the approved West Virginia guidance to provide consistency with the remainder of the HUCB as it has been reviewed and approved by EPA Region 3. A copy of the Kentucky and West Virginia criteria are included as Exhibits 2 and 3 for reference.

Ms. Jutta Schneider  
April 25, 2023  
Page 3 of 3

We look forward to your response to this petition as soon as possible. If you have any questions or require additional information, please do not hesitate to contact me.

Sincerely,



Christopher J. Stanley  
Manager

cc: Mr. David Whitehurst (DEQ)  
Mr. Brooks M. Smith (Troutman Pepper)  
Mr. Timothy R. Browning (Artemis Consulting)

## Attachment 2

### EPA 2016 Selenium Aquatic Life Criteria vs VA's Current Selenium Criteria

	Chronic					Short-term
Criterion Version	Egg-Ovary [mg/kg dw]	Whole Body [mg/kg dw]	Muscles [mg/kg dw]	Water Lentic [ug/L]	Water Lotic [ug/L]	Water [ug/L]
2016 Selenium Criterion	15.1 No exceedance	8.5 No exceedance	11.3 No exceedance	1.5 (30-day avg)	3.1 (30-day avg)	Intermittent exposure equation (durations shorter than 30 days)
Current VA Selenium Criterion	N/A	N/A	N/A	5 (4-day avg)	5 (4-day avg)	20 (1-hr avg)

**Attachment 3**  
Agency Background Document for the Proposed Regulatory Amendment



[townhall.virginia.gov](http://townhall.virginia.gov)

## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-260
<b>VAC Chapter title(s)</b>	Water Quality Standards
<b>Action title</b>	Rulemaking to adopt site specific selenium aquatic life criteria for four streams which are tributaries to Knox Creek in Buchanan County.
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

In response to a petition to amend the Water Quality Standards regulation (WQS), the State Water Control Board proposes to amend the WQS (9VAC25-260) to incorporate site-specific selenium criteria for the protection of freshwater aquatic life in four streams which are tributaries to Knox Creek in Buchanan County, Virginia. The specific streams which are the focus of this rulemaking are:

- 1) Race Fork and tributaries
- 2) Pounding Mill Creek and tributaries
- 3) Right Fork of Lester Fork and tributaries
- 4) Abners Fork and tributaries

The intent of this rulemaking is to establish site-specific selenium aquatic life criteria which protect designated and beneficial uses of state waters by adopting regulations that are technically correct and reasonable. These site-specific criteria will replace the existing aquatic life selenium water quality criteria in the specified watersheds and will be implemented in water quality programs which protect and maintain the WQS, including the Virginia Pollutant Discharge Elimination System permit program and the Clean Water Act 305(b) water quality assessment report and 303(d) listing of impaired waters.

## Acronyms and Definitions

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

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Board	State Water Control Board
DEQ	Department of Environmental Quality, also referred to as the Department
EPA	U.S. Environmental Protection Agency
VA Energy	Virginia Department of Energy
VPDES	Virginia Pollutant Discharge Elimination System
WQS	Water Quality Standards, 9VAC25-260 et al.

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."*

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DEQ received correspondence dated April 25, 2023, from Clintwood JOD, LLC (CJOD) petitioning the Board to promulgate site-specific aquatic life criterion for selenium. Specifically, CJOD formally requested that the Board amend the existing surface water quality criteria for selenium to allow a special standard (9VAC25-260-310) incorporating EPA's *Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater*, as published in the Federal Register on July 13, 2016 (Vol. 81, No. 134) and revised in August 2021.

At its meeting on August 23, 2023, the Board directed DEQ to proceed with initiating a rulemaking to incorporate site specific selenium criteria as a special standard in the WQS regulation (9VAC25-260) consistent with the petition request for the specific tributaries to Knox Creek in Buchanan County. A Notice of Intended Regulatory Action (NOIRA) was published in the Virginia Register on February 26, 2024. The comment period ended March 27, 2024. A regulatory advisory panel (RAP) was formed and one meeting was held with the RAP on April 24, 2024.

## Legal Basis

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

The promulgating entity is the State Water Control Board (Board).

The Clean Water Act authorizes restoration and maintenance of the chemical, physical, and biological integrity of the Nation's waters.

The Federal regulations at 40 CFR 131 authorize requirements and procedures for developing, reviewing, revising, and approving water quality standards by the States as authorized by section 303(c) of the Clean Water Act. 40 CFR 131 specifically requires the states to adopt criteria to protect designated uses.

The purpose of the State Water Control Law (Code of Virginia) is established in §62.1-44.2 and includes protection and restoration of the quality of state waters, safeguarding clean waters from pollution, prevention and reduction of pollution and promotion of water conservation. The State Water Control Law at §62.1-44.15(3a) also requires the Board to establish standards of quality consistent with its purpose and to modify, amend or cancel any such standards or policies.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of criteria that will protect designated uses. The WQS regulation identifies the uses to be made of surface waters, referred to as designated uses, and establishes water quality criteria to protect the designated uses. The amendments to the WQS under consideration will provide an alternative, site-specific criterion for freshwater selenium ensuring the aquatic life designated use is protected with regard to this parameter.

The authority to adopt standards as provided by the provisions in the previously referenced citations is mandated, although the specific standards to be adopted or modified are discretionary to the Environmental Protection Agency and the state.

## Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

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The purpose of this rulemaking is to establish site-specific selenium aquatic life criteria which protect designated and beneficial uses of state waters by adopting regulations that are technically correct and reasonable. The rulemaking is in response to the petition received to amend the WQS regulation to incorporate EPA's 2016 recommended selenium criteria for the specific waterbodies listed in Buchanan County. The proposed criteria are for the protection of aquatic life and are only indirectly related to the health, safety, and welfare of citizens. Proper water quality standards protect water quality and living resources of Virginia's waters for the designated uses of aquatic life, wildlife, recreation, public water supply, shellfish consumption, and fish consumption.

## Substance

*Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.*

---

This rulemaking is to amend the WQS regulation to include a site-specific freshwater aquatic life selenium criterion in Section 9VAC25-260-310 for several tributaries to Knox Creek in Buchanan County. Those tributaries are:

- 1) Race Fork and tributaries
- 2) Pounding Mill Creek and tributaries
- 3) Right Fork of Lester Fork and tributaries
- 4) Abners Fork and tributaries

The site-specific criteria for consideration under this rulemaking reflect EPA's recommended selenium water quality criterion for protection of aquatic life for the streams noted above in the Knox Creek watershed. EPA's recommended criterion was first published on July 13, 2016.

EPA's recommended freshwater criterion is a chronic criterion expressed in terms of both fish tissue concentration (egg/ovary, whole body, and muscle) and two different water concentrations. The criterion elements are hierarchical with fish tissue values taking precedence should sufficient fish tissue data be available. This is EPA's first aquatic life criterion utilizing fish tissue as a direct expression of the recommended criterion. Accordingly, implementation of these criteria is substantially different from established Clean Water Act water quality programs, including the VPDES program and the water quality assessment program.

The proposed amendments to the WQS regulation would amend the special standards section of the WQS regulation (9VAC25-260-310) to include site site-specific selenium criterion. Additionally, a notation will be placed in Section 3 of the Big Sandy River basin table (9VAC25-260-490) to indicate the general geographic applicability of the special standard.

## Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

The primary advantage to the public is that the proposed selenium criteria are based on updated scientific information to protect aquatic life. The disadvantage is that criteria that become more stringent may result in increased costs to the regulated community. However, the goal is to set realistic, protective goals in water quality management and to maintain the most scientifically defensible criteria in the Water Quality Standards regulation.

The advantage to the agency or the Commonwealth that will result from the adoption of these amendments may be additional flexibility for developing accurate and scientifically defensible permit limits, assessments, and clean-up plans (TMDLs) which ensure protection of the WQS. These are discussed under the "Purpose" section where the goals of the proposal, the environmental benefits, and the problems the proposal is intended to solve are discussed.

The regulated community may find that the amendments pertinent to their operations may require additional capital or operating costs for control in their discharge, particularly where the numerical criteria are more stringent (see Economic Impact). However, it is not known whether the proposed, site-specific criteria will be more, or less, stringent than the current selenium aquatic life criteria contained in the WQS regulation.

The regulatory changes produce indirect benefits through protection of water quality and living resources of Virginia's waters for the designated uses of aquatic life and wildlife while providing additional options for permittees in the subject watersheds to demonstrate compliance with water quality requirements contained in VPDES permits.

## Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

---

There are no requirements that exceed applicable federal requirements.

## Agencies, Localities, and Other Entities Particularly Affected

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

---

### Other State Agencies Particularly Affected

It is anticipated VA Energy will be particularly affected by these regulations as related to discharge permits. VA Energy is the agency charged with implementing the VPDES program for coal mining operations in Virginia. Accordingly, they would have primary responsibility for implementing the amended criteria. VA Energy has been actively involved in this rulemaking and is aware of the proposed criteria and the need to establish implementation procedures for incorporating the proposed criteria into their VPDES program.

### Localities Particularly Affected

In general, Water Quality Standards are developed and implemented for the protection of all designated uses statewide. However, due to the site-specific nature of this amendment, the below localities may bear a disproportionate material impact not experienced by other localities due to the location of these localities relative to the site-specific nature of the proposed amended criteria.

County: Buchanan County

### Other Entities Particularly Affected

Due to the limited geographic application of the proposed criteria, staff anticipates this to impact at least one surface coal mining facility. That facility is owned by the petitioner.

## Economic Impact

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:          a) fund source / fund detail;          b) delineation of one-time versus on-going expenditures; and          c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>There are no projected direct costs resulting from the proposed regulatory change.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no projected costs, savings, fees, or revenues resulting from the proposed regulatory change.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The regulatory changes produce indirect benefits through protection of water quality and living resources of Virginia's waters for the designated uses of aquatic life and wildlife while providing additional options for permittees in the subject watersheds to demonstrate compliance with water quality requirements contained in VPDES permits.</p>

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

See Table 2 of the ORM Economic Impact form.

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

See Tables 3 and 4 of the ORM Economic Impact form.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

One alternative is to keep the WQS regulation unchanged. This was not selected as the Board has directed the Department to initiate a rulemaking.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### **Regulatory Flexibility Analysis**

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

---

The WQS regulation does not establish compliance or reporting requirements. The proposed changes in the WQS regulation would be implemented through established DEQ programs, including the VPDES permitting program, the water quality monitoring and assessment programs, and the TMDL program. Additionally, the VPDES permitting authority for coal mining operations is VA Energy. The water quality programs responsible for ensuring protection of the WQS have the flexibility to implement the proposed amendments to provide for flexibility in demonstrating regulatory compliance as there are multiple end-points to the proposed criteria. It is DEQ's understanding that support for the proposed amendments by the petitioner and VA Energy is because they provide greater flexibility in ensuring protection of the water quality standards and designated uses of the subject waterbodies through the VPDES regulatory program.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

### **Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, 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 NOPC is not being used to announce a periodic review or a small business impact review. This regulatory action is the result of the Board directive to staff to initiate this rulemaking in response to a petition requesting that the WQS be amended to include site-specific selenium criteria for the waters described in the Substance section. This regulatory action is necessary for the protection of the Commonwealth's surface waters and aquatic life. The Water Quality Standards regulation forms the basis upon which effluent discharge limits are set and upon which it is determined whether waters are attaining applicable designated uses. All comment received during the Notice Of Intended Regulatory Action were supportive of the amendments.

## Public Comment

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

---

See Attachment 1 for a summary of public comments received from the NOIRA comment period.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

---

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the agency's regulatory flexibility analysis stated in that section of this background document. Also, the 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 through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to David C. Whitehurst, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, VA 23218; Phone: 804-774-9180; Email: [David.Whitehurst@deq.virginia.gov](mailto:David.Whitehurst@deq.virginia.gov). 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 (<https://townhall.virginia.gov>) and on the Commonwealth Calendar website (<https://commonwealthcalendar.virginia.gov/>). Both oral and written comments may be submitted at that time.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between the existing VAC Chapter(s) and the proposed regulation. If the existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

<b>Current chapter-section number</b>	<b>New chapter-section number, if applicable</b>	<b>Current requirements in VAC</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
9VAC25-260-310		Currently no Special Standard "jj".	Adds Special Standard "jj" which is a site-specific freshwater selenium criterion for the protection of aquatic life. This Special Standard replaces the statewide selenium criteria for Race Fork, Pounding Mill Creek, Right Fork of Lester Fork, Abner's Fork, and their respective tributaries.
9VAC25-260-490		Currently no notation for "jj".	Adds the notation "jj" to the Special Standards column for section 3 of the Big Sandy River basin table.

## Family Impact

*In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

It is not anticipated that this regulation will have a direct impact on the institution of the family and family stability.

## ATTACHMENT 1

### Summary of Comments from the Site-Specific Selenium Criteria Notice of Intended Regulatory Action

Comment period February 26, 2024 – March 27, 2024

Commenter	Comment Summary	Agency Response
<ul style="list-style-type: none"> <li>◦ Clintwood JOD (petitioner)</li> <li>◦ Aquatic Resources Management</li> <li>◦ Auger Coal</li> <li>◦ Bellamy Engineering</li> <li>◦ Metallurgical Coal Producers Association (MCPA)</li> <li>◦ Wellmore</li> <li>◦ Cleveland Cliffs</li> <li>◦ Environmental Design Consultants</li> <li>◦ SynTerra, Environmental Monitoring Inc.</li> </ul>	<p>Common themes for all individual comments received:</p> <ul style="list-style-type: none"> <li>• EPA issued recommended fish tissue criteria for selenium in 2016, and the proposed site-specific criteria are consistent with EPA's recommendations and its latest implementation guidance.</li> <li>• The criteria are protective of downstream waters in West Virginia and Kentucky.</li> <li>• Both downstream states have already adopted criteria modeled after EPA's recommendations.</li> <li>• They urge DEQ to proceed with the next steps in the rulemaking without delay, and they are willing to participate and provide further support however needed.</li> </ul>	<p>Agency staff acknowledge the comments.</p>
<p>337 form letters from Clintwood JOD employees</p>	<ul style="list-style-type: none"> <li>• Support the rulemaking for site-specific selenium criteria.</li> <li>• Note that the petition requested that DEQ support using implementation guidance modeled after West Virginia guidance which has been reviewed and approved by EPA Region 3 and is currently in effect for downstream waters. They also note that mention of the implementation guidance was not provided in the NOIRA as published.</li> <li>• Commenters state health of the Virginia coal industry has a substantial impact on the continued operation of their employer's business.</li> </ul>	<p>Agency staff acknowledge the comments.</p>
<p>6 letters from Aquatic Resources Management, LLC employees</p>	<p>Same comments as noted above</p>	<p>Agency staff acknowledge the comments.</p>
<p>2 letters from Environmental Monitoring, Inc. employees</p>	<p>Same comments as noted above</p>	<p>Agency staff acknowledge the comments.</p>
<p>2 letters from SynTerra employees</p>	<p>Same comments as noted above</p>	<p>Agency staff acknowledge the comments.</p>
<p>Virginia Dept. of Energy</p>	<p>VA Energy Mined Land Repurposing Division (MLRD) supports the rulemaking. Establishment of the proposed ambient criterion would provide their agency greater flexibility in permit writing. They</p>	<p>Agency staff acknowledge the comments.</p>

Commenter	Comment Summary	Agency Response
	request that DEQ continue to consider the petitioner's proposal to model implementation after existing guidance available from West Virginia and Kentucky as a large portion of the coalfield counties drain to the Tug Fork or Upper Levisa watersheds, which flow into these states.	

### Attachment 4

#### Selenium SSC Rulemaking Regulatory Advisory Group 2024

	<b>Participation Request?</b>	<b>Contact Information</b>	<b>Attended April 24, 2024 RAP Meeting</b>
Appalachian Voices	YES	Matt Hepler 816 Park Ave NW Norton VA 24273 540-871-1564 <a href="mailto:matt.hepler@appvoices.org">matt.hepler@appvoices.org</a>	Matt Hepler <a href="mailto:matt.hepler@appvoices.org">matt.hepler@appvoices.org</a>
The Nature Conservancy	NO	Brad Kreps, Clinch Valley Program Director <a href="mailto:bkreps@tnc.org">bkreps@tnc.org</a>	Braven Beatty (Alternate) <a href="mailto:bbeaty@tnc.org">bbeaty@tnc.org</a>
Metallurgical Coal Producers Association (MCPA)	YES	Benjamin R. Beakes, President 304-993-8917 <a href="mailto:ben@metcoalproducers.com">ben@metcoalproducers.com</a>	Shelley Surles (Alternate) <a href="mailto:ssurles@alphametresources.com">ssurles@alphametresources.com</a>
Clintwood JOD, LLC	YES	Chris Stanley (606) 835-3244 (276) 393-0800 <a href="mailto:chris.stanley@clintwoodjod.com">chris.stanley@clintwoodjod.com</a>	Tim Browning (Alternate) Artemis Consulting Services, LLC <a href="mailto:tbrowning@artemisllc.com">tbrowning@artemisllc.com</a>
US Fish & Wildlife Service	YES	Anne Condon U.S. Fish and Wildlife Service Virginia Field Office 6669 Short Lane Gloucester, VA 23061 804-815-1559 (cell) <a href="mailto:Anne_Condon@fws.gov">Anne_Condon@fws.gov</a>	Serena Ciparis (Alternate) <a href="mailto:serena_ciparis@fws.gov">serena_ciparis@fws.gov</a>  JoAnn Banda (Alternate) <a href="mailto:joann_banda@fws.gov">joann_banda@fws.gov</a>
VA Department of Energy (VA Energy)	YES	Marshall Moore Manager 276-523-8226 <a href="mailto:marshall.moore@energy.virginia.gov">marshall.moore@energy.virginia.gov</a>	Jared Worley (Alternate) <a href="mailto:Jared.worley@energy.virginia.gov">Jared.worley@energy.virginia.gov</a> Office (276)-523-818
VA Department of Wildlife Resources (DWR)	NO	Hannah Schul Environmental Services Program Manager Department of Wildlife Resources 7870 Villa Park Dr. Suite 400 Henrico, VA 23228 (804) 367-0909 <a href="mailto:Hannah.Schul@dwr.virginia.gov">Hannah.Schul@dwr.virginia.gov</a>	Jeff Williams (Alternate) Regional Fisheries Manager <a href="mailto:Jeff.Williams@dwr.virginia.gov">Jeff.Williams@dwr.virginia.gov</a>
Dr. C. Andrew Dolloff	YES	3500 Isabel Court Blacksburg, VA 24060 540 230-0694	Dr. C. Andrew Dolloff <a href="mailto:cadolloff@icloud.com">cadolloff@icloud.com</a>

## **Attachment 5: State Water Control Board, 9VAC25-260 Virginia Water Quality Standards, Site-Specific Selenium Criteria Amendments**

### **State Water Control Board**

#### **Rulemaking to adopt site specific selenium aquatic life criteria for four streams which are tributaries to Knox Creek in Buchanan County**

##### **Chapter 260 Water Quality Standards**

#### **9VAC25-260-310. Special standards and requirements.**

The special standards are shown in small letters to correspond to lettering in the basin tables. The special standards are as follows:

a. Shellfish waters. In all open ocean or estuarine waters capable of propagating shellfish or in specific areas where public or leased private shellfish beds are present, including those waters on which condemnation classifications are established by the Virginia Department of Health, the following criteria for fecal coliform bacteria will apply:

The geometric mean fecal coliform value for a sampling station shall not exceed an MPN (most probable number) or MF (membrane filtration using mTEC culture media) of 14 per 100 milliliters (ml) of sample and the estimated 90th percentile shall not exceed an MPN of 43 per 100 ml for a 5-tube decimal dilution test or an MPN of 49 per 100 ml for a 3-tube decimal dilution test or MF test of 31 CFU (colony forming units) per 100 ml.

The shellfish area is not to be so contaminated by radionuclides, pesticides, herbicides, or fecal material that the consumption of shellfish might be hazardous.

b. Policy for the Potomac Embayments. At its meeting on September 12, 1996, the board adopted a policy (9VAC25-415. Policy for the Potomac Embayments) to control point source discharges of conventional pollutants into the Virginia embayment waters of the Potomac River, and their tributaries, from the fall line at Chain Bridge in Arlington County to the Route 301 bridge in King George County. The policy sets effluent limits for BOD<sub>5</sub>, total suspended solids, phosphorus, and ammonia, to protect the water quality of these high profile waterbodies.

c. Canceled.

d. Canceled.

e. Canceled.

f. Canceled.

g. Occoquan watershed policy. At its meeting on July 26, 1971 (Minute 10), the board adopted a comprehensive pollution abatement and water quality management policy for the Occoquan watershed. The policy set stringent treatment and discharge requirements in order to improve and protect water quality, particularly since the waters are an important water supply for Northern Virginia. Following a public hearing on November 20, 1980, the board, at its December 10-12, 1980, meeting, adopted as of February 1, 1981, revisions to this policy (Minute 20). These revisions became effective March 4, 1981. Additional amendments were made following a public hearing on August 22, 1990, and adopted by

the board at its September 24, 1990, meeting (Minute 24) and became effective on December 5, 1990. Copies are available upon request from the Department of Environmental Quality.

h. Canceled.

i. Canceled.

j. Canceled.

k. Canceled.

l. Canceled.

m. The following effluent limitations apply to wastewater treatment facilities treating an organic nutrient source in the entire Chickahominy watershed above Walker's Dam (this excludes discharges consisting solely of stormwater):

CONSTITUENT	CONCENTRATION
1. Biochemical oxygen demand 5-day	6 mg/l monthly average, with not more than 5% of individual samples to exceed 8 mg/l.
2. Settleable solids	Not to exceed 0.1 ml/l monthly average.
3. Suspended solids	5.0 mg/l monthly average, with not more than 5% of individual samples to exceed 7.5 mg/l.
4. Ammonia nitrogen	Not to exceed 2.0 mg/l monthly average as N.
5. Total phosphorus	Not to exceed 0.10 mg/l monthly average for all discharges with the exception of Tyson Foods, Inc., which shall meet 0.30 mg/l monthly average and 0.50 mg/l daily maximum.
6. Other physical and chemical constituents	Other physical or chemical constituents not specifically mentioned will be covered by additional specifications as conditions detrimental to the stream arise. The specific mention of items 1 through 5 does not necessarily mean that the addition of other physical or chemical constituents will be condoned.

n. No sewage discharges, regardless of degree of treatment, should be allowed into the James River between Boshier and Williams Island Dams.

o. The concentration and total amount of impurities in Tuckahoe Creek and its tributaries of sewage origin shall be limited to those amounts from sewage, industrial wastes, and other wastes that are now present in the stream from natural sources and from existing discharges in the watershed.

p. Canceled.

q. Canceled.

r. Canceled.

s. Canceled.

t. Canceled.

u. Maximum temperature for the New River Basin from the Virginia-West Virginia state line upstream to the Giles-Montgomery County line:

The maximum temperature shall be 27°C (81°F) unless caused by natural conditions; the maximum rise above natural temperatures shall not exceed 2.8°C (5°F).

This maximum temperature limit of 81°F was established in the 1970 water quality standards amendments so that Virginia temperature criteria for the New River would be consistent with those of West Virginia, since the stream flows into that state.

v. The maximum temperature of the New River and its tributaries (except trout waters) from the Montgomery-Giles County line upstream to the Virginia-North Carolina state line shall be 29°C (84°F).

w. Canceled.

x. Clinch River from the confluence of Dumps Creek at river mile 268 at Carbo downstream to river mile 255.4. The special water quality criteria for copper (measured as total recoverable) in this section of the Clinch River are 12.4 µg/l for protection from chronic effects and 19.5 µg/l for protection from acute effects. These site-specific criteria are needed to provide protection to several endangered species of freshwater mussels.

y.

Canceled.

z. A site specific dissolved copper aquatic life criterion of 16.3 µg/l for protection from acute effects and 10.5 µg/l for protection from chronic effects applies in the following area:

Little Creek to the Route 60 (Shore Drive) bridge including Little Channel, Desert Cove, Fishermans Cove, and Little Creek Cove.

Hampton Roads Harbor including the waters within the boundary lines formed by I-664 (Monitor-Merrimac Memorial Bridge Tunnel) and I-64 (Hampton Roads Bridge Tunnel), Willoughby Bay, and the Elizabeth River and its tidal tributaries.

This criterion reflects the acute and chronic copper aquatic life criterion for saltwater in 9VAC25-260-140 B X a water effect ratio. The water effect ratio was derived in accordance with 9VAC25-260-140 F.

aa. The following site-specific dissolved oxygen criteria apply to the tidal Mattaponi and Pamunkey Rivers and their tidal tributaries because of seasonal lower dissolved oxygen concentration due to the natural oxygen depleting processes present in the extensive surrounding tidal wetlands. These criteria apply June 1 through September 30 to Chesapeake Bay segments MPNTF, MPNOH, PMKTF, PMKOH and are implemented in accordance with subsection D of 9VAC25-260-185. These criteria supersede the open water criteria listed in subsection A of 9VAC25-260-185.

Designated use	Criteria Concentration/Duration	Temporal Application
Open water	30 day mean ≥ 4.0 mg/l	June 1 - September 30
	Instantaneous minimum ≥ 3.2 mg/l at temperatures <29°C	
	Instantaneous minimum ≥ 4.3 mg/l at temperatures ≥ 29°C	

A site-specific pH criterion of 5.0-8.0 applies to the tidal freshwater Mattaponi Chesapeake Bay segment MPNTF to reflect natural conditions.

bb. The following site-specific seasonal mean criteria should not be exceeded in the specified tidal James River segment more than twice in six years. Should consecutive exceedances of the same seasonal mean criterion occur in a waterbody segment after the

effective date, January 9, 2020, of these chlorophyll a criteria, the department will examine additional lines of evidence, including the occurrence of harmful algae blooms, physicochemical monitoring and phytoplankton datasets, and fish kill reports in the evaluation of the appropriate assessment category for the waterbody segment. The department will develop guidance for inclusion in the Water Quality Assessment Guidance Manual to address evaluating the appropriate assessment category when consecutive exceedances of the same seasonal mean criterion occur. The department will determine if additional monitoring for harmful algal blooms is warranted.

Designated Use	Chlorophyll a $\mu$ /l	Chesapeake Bay Program Segment	Temporal Application
Open water	8	JMSTF2	March 1 - May 31 (spring)
	10	JMSTF1	
	13	JMSOH	
	7	JMSMH	
	8	JMSPH	
	21	JMSTF2	July 1 - September 30 (summer)
	24	JMSTF1	
	11	JMSOH	
	7	JMSMH	
	7	JMSPH	

The following site-specific chlorophyll a concentrations at the specified duration should not be exceeded more than 10% of the time over six summer seasons in the specified area of the tidal James River. These criteria protect against aquatic life effects due to harmful algal blooms. Such effects have not been documented in the upper portion of JMSTF2 or in JMSOH.

Chlorophyll a $\mu$ g/l	Chesapeake Bay Program Segment	Spatial Application	Duration
--	JMSTF2	Upstream boundary of JMSTF2 to river mile 95	--
52	JMSTF2	River mile 95 to downstream boundary of JMSTF2	1-month median
52	JMSTF1	Upstream boundary of JMSTF1 to river mile 67	1-month median
34	JMSTF1	River mile 67 to downstream boundary of JMSTF1	1-month median
--	JMSOH	Entire segment	--
59	JMSMH	Entire segment	1-day median

20	JMSPH	Entire segment	1-day median
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(1) The site-specific numerical chlorophyll a criteria apply to the tidal James River segments (excludes tributaries) JMSTF2, JMSTF1, JMSTF, JMSPH, and JMSPH, the boundaries of which are described in EPA 903-R-05-004.

(2) For segments JMSTF, JMSPH, and JMSPH, the median of same-day samples collected one meter or less in a segment should be calculated to represent the chlorophyll a expression of a segment over that day, and the median of same-month chlorophyll a values should be calculated to represent the chlorophyll a expression of a segment over that month. The seasonal geometric mean shall be calculated from the monthly chlorophyll a values for a segment.

(3) For segment JMSTF2, chlorophyll a data collected in the "upper zone" (from the upstream boundary at the fall line to approximately river mile 95 (N37° 23' 15.27" / W77° 18' 45.05" to N37° 23' 19.31" / W77° 18' 54.03")) should be pooled, in the manner described in subdivision bb (2) of this section, separately from chlorophyll a data collected in the "lower zone" (from river mile 95 to the downstream boundary of JMSTF2). The seasonal geometric mean for each of these zones should be calculated from their respective monthly chlorophyll a values. To calculate the seasonal segment-wide geometric mean, an area-weighted average of the zonal geometric means should be calculated using the following equation:

$$\text{Upper Zone Geometric Mean} \times 0.41 + \text{Lower Zone Geometric Mean} \times 0.59$$

(4) For segment JMSTF1, chlorophyll a data collected in the "upper zone" (from the upstream boundary of JMSTF1 to approximately river mile 67 (N37° 17' 46.21" / W77° 7' 9.55" to N37° 18' 58.94" / W77° 6' 57.14")) should be pooled, in the manner described in subdivision bb (2) of this section, separately from chlorophyll a data collected in the "lower zone" (between river mile 67 to the downstream boundary of JMSTF1). The seasonal geometric mean for each of these zones should be calculated from their respective monthly chlorophyll a values. To calculate the seasonal segment-wide geometric mean, an area-weighted average of the zonal geometric means should be calculated using the following equation:

$$\text{Upper Zone Geometric Mean} \times 0.49 + \text{Lower Zone Geometric Mean} \times 0.51$$

cc. For Mountain Lake in Giles County, chlorophyll a shall not exceed 6 µg/L at a depth of six meters and orthophosphate-P shall not exceed 8 µg/L at a depth of one meter or less.

dd. For Lake Drummond, located within the boundaries of Chesapeake and Suffolk in the Great Dismal Swamp, chlorophyll a shall not exceed 35 µg/L and total phosphorus shall not exceed 40 µg/L at a depth of one meter or less.

ee. Maximum temperature for these seasonally stockable trout waters is 26°C and applies May 1 through October 31.

ff. Maximum temperature for these seasonally stockable trout waters is 28°C and applies May 1 through October 31.

gg. Little Calfpasture River from the Goshen Dam to 0.76 miles above its confluence with the Calfpasture River has a stream condition index (A Stream Condition Index for Virginia Non-Coastal Streams, September 2003, Tetra Tech, Inc.) of at least 20.5 to protect the subcategory of aquatic life that exists in this river section as a result of the hydrologic modification. From 0.76 miles to 0.02 miles above its confluence with the Calfpasture River, aquatic life conditions are expected to gradually recover and meet the general aquatic life uses at 0.02 miles above its confluence with the Calfpasture River.

hh. Maximum temperature for these seasonally stockable trout waters is 31°C and applies May 1 through October 31.

ii. In the wadeable portions of the mainstem sections of the Shenandoah River, North Fork Shenandoah River, and South Fork Shenandoah River listed in the table in this subdivision, a determination of persistent nuisance filamentous algae impeding the recreation use should be made when exceedances of either of the specified benthic chlorophyll-a concentration thresholds occur in more than one recreation season (May 1 to October 31) in three years. "Wadeable" constitutes a stream that can be crossed and sampled safely during a given sampling event occurring within the recreation season.

Segment	Two-Month Median (mg/m <sup>2</sup> )	Seasonal Median (mg/m <sup>2</sup> )
Shenandoah River from its confluence of the North Fork and South Fork Shenandoah Rivers downstream to the Virginia-West Virginia state line	150	100
North Fork Shenandoah River from its confluence with Fort Run downstream to its confluence with the South Fork Shenandoah River	150	100
South Fork Shenandoah River from its confluence with the North and South Rivers downstream to its confluence with the North Fork Shenandoah River	150	100

jj. The selenium chronic criteria for the protection of freshwater aquatic life apply in the following waters:

Knox Creek watershed in Buchanan County

1. Race Fork and tributaries.
2. Pounding mill Creek and tributaries.
3. Right Fork of Lester Fork and tributaries.
4. Abners Fork and tributaries.

<u>Media Type</u>	<u>Fish Tissue<sup>1</sup></u>		<u>Water Column<sup>4</sup></u>	
	<u>Egg-ovary<sup>2</sup></u>	<u>Fish Whole-body or Muscle<sup>3</sup></u>	<u>Monthly Average Exposure</u>	<u>Intermittent Exposure<sup>5</sup></u>
<u>Magnitude</u>	<u>15.1 mg/kg dw</u>	<u>8.5 mg/kg dw whole-body or 11.3 mg/kg dw muscle (skinless, boneless file)</u>	<u>1.5 µg/L in lentic aquatic systems</u> <u>3.1 µg/L in lotic aquatic systems</u>	<u><math>WQC_{int} = WQC_{30-day} - \frac{C_{bkamd}(1 - f_{int})}{f_{int}}</math></u>
<u>Duration</u>	<u>Instantaneous measurement<sup>6</sup></u>	<u>Instantaneous measurement<sup>6</sup></u>	<u>30 days</u>	<u>Number of days/month with an elevated concentration</u>
<u>Frequency</u>	<u>Not to be exceeded</u>	<u>Not to be exceeded</u>	<u>Not more than once in three years on average</u>	<u>Not more than once in three years on average</u>

mg/kg dw = milligrams per kilogram dry weight

1. Fish tissue elements are expressed as steady-state.
2. Egg-ovary supersedes any whole-body, muscle, or water column element when fish egg-ovary concentrations are measured.
3. Fish whole-body or muscle tissue supersedes water column element when both fish tissue and water concentrations are measured.
4. Water column values are based on dissolved total selenium in water and are derived from fish tissue values via bioaccumulation modeling. Water column values are the applicable criterion element in the absence of steady-state condition fish tissue data. In fishless waters, selenium concentrations in fish from the nearest downstream waters may be used to assess compliance using methods provided in *Aquatic Life Ambient Water Quality Criterion for Selenium – Freshwater*, EPA-822-R-16-006, Appendix K: *Translation of a Selenium Fish Tissue Criterion Element to a Site-Specific Water Column Value* (June 2016).
5. Where  $WQC_{30\text{-day}}$  is the water column monthly element for either lentic (still) or lotic (flowing) waters;  $C_{\text{bkgrnd}}$  is the average background selenium concentration; and  $f_{\text{int}}$  is the fraction of any 30-day period during which elevated selenium concentrations occur, with  $f_{\text{int}}$  assigned a value  $\geq 0.033$  (corresponding to 1 day).
6. Fish tissue data provide instantaneous point measurements that reflect integrative accumulation of selenium over time and space in fish population(s) at a given site.

**9VAC25-260-490. Tennessee and Big Sandy River Basins (Big Sandy River Subbasin).**

SEC.	CLASS	SP. STDS.	SECTION DESCRIPTION
1	IV		All tributaries of Tug Fork in Virginia.
2	IV		All tributaries of Jacobs Fork and Dry Fork in Virginia.
2a	IV	PWS	Crockett Cove, a tributary to Jacobs Fork, from Bishop's raw water intake to its headwaters.
3	IV	ii	Levisa Fork and its tributaries and Knox Creek and its tributaries, unless otherwise designated in this chapter, from the Virginia-Kentucky state line upstream to their headwaters.
	V		Stockable Trout Waters in Section 3
	vi		Dismal Creek from its mouth to its headwaters.
4	IV		Russell Fork and its tributaries, unless otherwise designated in this chapter, from the Virginia-Kentucky state line upstream to their headwaters.
	V		Stockable Trout Waters in Section 4
	***		Caney Creek from Long Branch Creek upstream 5.5 miles.
	vi		Frying Pan Creek from 1.3 miles above its confluence with Russell Fork 8.6 miles upstream (in vicinity of Bucu).

	vi		North Fork Pound River from the town limits of Pound upstream to the water supply dam.
	***		Russell Fork from the confluence of Pound River to the Virginia-Kentucky state line.
	VI		Natural Trout Waters in Section 4
	iii		Pound River from its confluence with Russell Fork upstream to the John W. Flannagan Dam.
4a	IV	PWS	Pound River and its tributaries from the John W. Flannagan Dam, including the Cranes Nest River and its tributaries to points 5 miles above the John W. Flannagan Water Authority's raw water intake.
4b	IV	PWS	North Fork Pound River and its tributaries from North Fork Pound River Dam and the Town of Pound's raw water intake upstream to their headwaters, unless otherwise designated in this chapter.
4c			(Deleted)
4d	IV		Phillips Creek from its mouth to its headwaters and the North Fork Pound River from Wise County's swimming area around the mouth of Phillips Creek to a point 1/2 mile upstream.
4e	IV	PWS	Russell Fork River and its tributaries from the Kentucky state line 2.2 miles upstream (Elkhorn City, Kentucky raw water intake including Grassy Creek from its confluence with Russell Fork northeast to the Kentucky state line, Hunts Creek from its confluence with Grassy Creek to 1 mile upstream, Laurel Branch to its headwaters including Laurel Lake (Breaks Interstate Park raw water intake).
	V		Stockable Trout Waters in Section 4e
	***	PWS	Russell Fork from the Kentucky state line 2.2 miles upstream.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-260
<b>VAC Chapter title(s)</b>	Water Quality Standards
<b>Action title</b>	Rulemaking to adopt site specific selenium aquatic life criteria for four streams which are tributaries to Knox Creek in Buchanan County.
<b>Date this document prepared</b>	May 7, 2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Proposed

### **Cost Benefit Analysis**

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

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

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

### **Introduction**

DEQ received correspondence dated April 25, 2023, from Clintwood JOD, LLC (CJOD), a coal mining company operating in Virginia, petitioning the State Water Control Board to promulgate site-specific aquatic life criterion for selenium. Specifically, CJOD formally requested that the Board amend the existing surface water quality criteria for selenium to allow a special standard (9VAC25-260-310) incorporating EPA's 2016 Recommended Aquatic Life Ambient Water Quality Criterion for Selenium in Freshwater. In response to the petition, the State Water Control Board directed staff to initiate a rulemaking to amend the WQS (9VAC25-260) to incorporate a site-specific selenium criterion for the protection of freshwater aquatic life that

only applies in four streams which are tributaries to Knox Creek in Buchanan County, Virginia. The selenium criterion has fish tissue and water column concentration values. The selenium concentration values are hierarchical so that fish values take precedence over water column values. This site-specific criteria for these four streams would align with EPA’s 2016 recommended selenium criteria and would replace the existing selenium criteria currently applicable statewide and in the subject watersheds.

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

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p>Direct Costs: There are no anticipated direct costs resulting from the proposed change.</p> <p>Indirect Costs: Facilities with VPDES permits in the Knox creek watershed subject to this site specific selenium criteria may incur a cost to collect fish tissue data to demonstrate compliance with the criteria. As the current statewide criteria only allows for water column data, this provides permittees with an additional option to measure selenium levels. Fish tissue samples are expected to cost approximately \$4,000 per watershed sample according to a firm representing the petitioner.</p> <p>Direct Benefits: There are no direct economic benefits of the proposed change.</p> <p>Indirect Benefits: Indirect benefits are recognized through protection of water quality and living resources of Virginia's waters for the designated uses of aquatic life and wildlife while providing additional options for permittees in the subject watersheds to demonstrate compliance with water quality requirements contained in VPDES permits. Fish tissue data gathered will give the department additional information on the presence of selenium in aquatic life in this watershed.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct &amp; Indirect Costs</p>	<p>Direct &amp; Indirect Benefits</p>
	<p>(a) Approx. \$4,000 per watershed sample event</p>	<p>(b) N/A</p>
<p>(3) Net Monetized Benefit</p>	<p>N/A</p>	
<p>(4) Other Costs &amp; Benefits (Non-Monetized)</p>	<p>Water quality criteria that become more stringent may result in increased costs to the regulated community. Site specific conditions will determine whether the proposed criteria will be more, or less, stringent than the current statewide standard. The petition to adopt the criteria was submitted by a Virginia Pollutant Discharge Elimination System (VPDES) permittee to allow them to have additional flexibility to</p>	

	comply with permit requirements ensuring protection of the aquatic life designated use.
(5) Information Sources	Discussions with Regulatory Advisory Panel NOIRA Comments Submitted RE: Site-Specific Selenium Criteria (9VAC25–260). The NOIRA comment period closed on March 27, 2024. <b>Artemis Consulting Services, LLC</b> P.O. Box 1085 Abingdon, VA 24212

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: There are no direct costs of the status quo.</p> <p>Indirect Costs: There are no indirect costs of the status quo.</p> <p>Direct Benefits: There are no direct economic benefits status quo.</p> <p>Indirect Benefits: There are no indirect benefits of the status quo.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs:</p> <p>No alternative to this regulatory change was considered aside from maintaining the status quo and leaving the regulation unchanged. This was not considered because the State Water Control Board directed staff to initiate a rulemaking to amend the WQS to include site-specific selenium criteria that reflect EPA’s most recent recommendations in the subject watersheds.</p>
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	Indirect Costs: N/A  Direct Benefits: N/A  Indirect Benefits: N/A	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

(1) Direct & Indirect Costs & Benefits (Monetized)	Direct Costs: There are no direct costs to localities.  Indirect Costs: There are no indirect costs to localities.  Direct Benefits: There are no direct benefits to localities.  Indirect Benefits: There are no indirect economic benefits to localities.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	Scientifically correct and legally defensible water quality standards to protect the surface waters of Virginia.	

(4) Assistance	N/A
(5) Information Sources	N/A

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: It is not anticipated that the proposed modification will have direct costs on the institution of the family and family stability.</p> <p>Indirect Costs: It is not anticipated that the proposed modification will have an indirect costs on the institution of the family and family stability.</p> <p>Direct Benefits: It is not anticipated that the proposed modification will have direct benefit on the institution of the family and family stability.</p> <p>Indirect Benefits: It is not anticipated that the proposed modification will have an indirect benefit on the institution of the family and family stability.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	Scientifically correct and legally defensible water quality standards to protect the surface waters of Virginia.	
(4) Information Sources		

**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

(1) Direct & Indirect Costs &	Direct Costs: There are no direct costs of the proposed change.
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Benefits (Monetized)	<p>Indirect Costs: There may be indirect costs of the proposed change in the form of data collection for fish tissue selenium concentrations in support of criteria implementation.</p> <p>Direct Benefits: There are no direct economic benefits.</p> <p>Indirect Benefits: There may be indirect benefits in providing VPDES permittees additional options to demonstrate compliance with permit requirements established to protect water quality and designated uses.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Approx. \$4,000 per watershed sample event	(b)
(3) Other Costs & Benefits (Non-Monetized)	Scientifically correct and legally defensible water quality standards to protect the surface waters of Virginia.	
(4) Alternatives	N/A	
(5) Information Sources	<p><b>Artemis Consulting Services, LLC</b>                  P.O. Box 1085                  Abingdon, VA 24212</p>	

**Changes to Number of Regulatory Requirements**

**Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

*Change in Regulatory Requirements*

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
9VAC25-260-310	(M/A):	15	0	0	0
	(D/A):	0	0	0	0
	(M/R):	4	0	0	0
	(D/R):	0	0	0	0
				<b>Grand Total of Changes in Requirements:</b>	(M/A): 0 (D/A): 0 (M/R): 0 (D/R): 0

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Cost Reductions or Increases (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Requirement</b>	<b>Initial Cost</b>	<b>New Cost</b>	<b>Overall Cost Savings/Increases</b>
N/A				

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Change</b>	<b>Overview of How It Reduces or Increases Regulatory Burden</b>
N/A		

*Length of Guidance Documents (only applicable if guidance document is being revised)*

<b>Title of Guidance Document</b>	<b>Original Word Count</b>	<b>New Word Count</b>	<b>Net Change in Word Count</b>

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

**TAB K**



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

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Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

**MEMORANDUM**

TO: State Water Control Board Members  
FROM: Meghan Mayfield, Director, Division of Water Permitting   
DATE: May 3, 2024  
SUBJECT: Proposed amendment to Sewage Collection and Treatment Regulation (9VAC25-790)

The proposed amendment was developed in response to the Phase III Watershed Implementation Plan (WIP III), which was completed in August 2019 to achieve nutrient and sediment reduction needed to restore the Chesapeake Bay and its tributaries. WIP III Initiative 53 requires the amendment of the existing Sewage Collection and Treatment Regulations (9VAC25-790) to include reporting requirements for all septic systems (or other on-site sewage disposal systems) taken off-line and connected sewage collection systems. The scope of this requirement is to ensure a more accurate count of nutrient reductions resulting from septic connected to sewer.

A Notice of Intended Regulatory Action (NOIRA) for the amendment was issued on September 11, 2024, and ended on October 11, 2023. The public comment period was extended to December 6, 2023, due to issues related to a DEQ staff member's email address not accepting comments for a portion of the comment period that ended on October 11, 2023. No public comments were received.

This amendment proposes to add a new regulatory section (section 985) to collect information on the number of onsite sewage systems taken offline and connected to sewerage systems that convey sewage to a sewage treatment works. Regulatory language was developed through the use of a Regulatory Advisory Panel (RAP). The RAP membership, the Agency Town Hall background document, and regulatory amendment language are attached to this memo.

The Office of the Attorney General will be sent the proposed regulation for certification of statutory authority to adopt the amendment.

Attachments: RAP Membership, Agency Background Document (Town Hall), and RIS Project 7661 regulatory language.

**RAP COMMITTEE MEMBERSHIP**  
**Amendment to the Sewage Collection and Treatment Regulations (9VAC25-790)**

<p><b>Ann Zimmerman</b>  Loudoun Water  42400 Clearwater Glen Circle  Leesburg, VA 20175  (571) 291-7841  <a href="mailto:amzimmerman@loudounwater.org">amzimmerman@loudounwater.org</a></p> <p><b>Alternate: Jennifer Kaberline</b>  (571) 291-7736  <a href="mailto:jakaberline@loudounwater.org">jakaberline@loudounwater.org</a></p>	<p><b>Kevin Parker</b>  Hampton Roads Sanitation District (HRSD)  1460 Air Rail Avenue  Virginia Beach, Va 23455  (757) 460-4244  <a href="mailto:kparker@hrsdc.com">kparker@hrsdc.com</a></p>
<p><b>Pamela Pruett</b>  Environmental Systems Consulting  P.O. Box 574  Warrenton, VA 20188  (540) 272-3892  <a href="mailto:PamelaMPruett@outlook.com">PamelaMPruett@outlook.com</a></p>	<p><b>Adrian Joye</b>  Fairfax County Health Department  10777 Main Street  Fairfax, VA 22030  (703) 246-8614  <a href="mailto:Adrian.joye@fairfaxcounty.gov">Adrian.joye@fairfaxcounty.gov</a></p>
<p><b>Timothy Castillo</b>  Amherst County Service Authority  113 Phelps Road/ P.O. Box 100  Madison Heights, VA 24572  (434) 845-1605  <a href="mailto:tcastillo@acsava.com">tcastillo@acsava.com</a></p>	<p><b>Steven P. Herzog</b>  Hanover County Department of Public Utilities  PO Box 470  Hanover, Virginia 23069  804-365-6022  <a href="mailto:spherzog@hanovercounty.gov">spherzog@hanovercounty.gov</a></p>
<p><b>Jeffrey Stiff</b>  Dinwiddie County Water Authority  P. O. Box 100  Sutherland, VA 23885  804-861-1012  <a href="mailto:jstiff@dcwa.org">jstiff@dcwa.org</a></p>	
<p><b>DEQ Staff:</b>  <b>Erica Duncan</b> – CO VPDES  <b>Joseph Bryan</b> – CO VPDES  <b>Laura Galli</b> – CO VPDES</p>	<p><b>DEQ Staff Technical Liaisons:</b></p>



[townhall.virginia.gov](http://townhall.virginia.gov)

## Proposed Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-790
<b>VAC Chapter title(s)</b>	<b>Sewage Collection and Treatment Regulations</b>
<b>Action title</b>	<b>Amend Sewage Collection and Treatment Regulations to include a reporting requirement for all septic systems taken off-line and connected to sewerage systems</b>
<b>Date this document prepared</b>	May 1, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The Sewage Collection and Treatment Regulations (9VAC25-790) regulate sewerage systems and treatment works.

The intent of this regulatory action is to determine how many septic systems (or other on-site sewage disposal systems) in the Chesapeake Bay watershed are taken off-line and the house, residence, or business is connected to a sewage treatment works that serves the locality. The data will be used to understand and quantify reductions in nutrient loads and pollution that impact water quality in the Chesapeake Bay.

In July 2018, The Environmental Protection Agency (EPA) issued State-Basin Planning targets for nitrogen and phosphorus in Virginia’s five river basins draining to the Chesapeake Bay. The Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP) represents the Commonwealth’s plan to achieve nutrient and sediment reductions needed to restore the Chesapeake Bay and its tidal tributaries.

Watershed Implementation Plans are roadmaps for how the seven jurisdictions (Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia) in the Chesapeake Bay Program (CBP) will attain the Chesapeake Bay TMDL. The Bay TMDL is an informal planning tool used to establish CBP goals. WIPs were agreed to be developed and implemented in three phases, with EPA agreeing to provide an assessment of the WIP. EPA does not provide an approval or disapproval of a WIP.

Amending the SCAT Regulations will ensure a more accurate count of nutrient reductions that result from directing sewage from individual septic systems and other on-site sewage disposal systems to a centralized sewage treatment works. Sewage treatment works have been upgraded to improve nutrient removal capability and are subject to discharge limitations through the Department of Environmental Quality’s (Department) Virginia Pollutant Discharge Elimination System (VPDES) permit program. Information about the number of septic systems that are no longer used to treat and dispose of sewage will assist with tracking the Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals, thus helping to certify that Virginia is meeting its reduction goals.

The requirement to amend the SCAT Regulations is directly mandated by the Commonwealth’s Chesapeake Bay TMDL Phase III WIP. Initiative 53 provides that “the Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems.”

## Acronyms and Definitions

*Define all acronyms used in this form, and any technical terms that are not also defined in the “Definitions” section of the regulation.*

- Board- State Water Control Board
- Agency or Department – Department of Environmental Quality
- CPB- Chesapeake Bay Program
- EPA- Environmental Protection Agency
- NOIRA – Notice of Intended Regulatory Action
- SCAT – Sewage Collection and Treatment Regulations, 9VAC25-790
- TMDL- Total Maximum Daily Load
- WIP – Watershed Implementation Plan

## Mandate and Impetus

*Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part.”*

The Commonwealth’s Chesapeake Bay TMDL Phase III WIP (Initiative 53) requires reporting of sewer connections by wastewater utilities. Initiative 53 provides that “[t]he Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems. This requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer.”

**Legal Basis**

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

The Board adopted the Sewage Collection and Treatment Regulations under the authority provided by §62.1-44.15(10) of the Code of Virginia. Additionally, § 62.1-4419 of the Code of Virginia requires that before an “owner may erect, construct, open, expand or operate a sewerage system or sewage treatment works which will have a potential discharge or actual discharge to state waters, such owner shall file with the Board an application for a certificate in scope and detail satisfactory to the Board.”

**Purpose**

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

This regulatory action is essential to protecting the water quality in the Commonwealth of Virginia, which is essential to the health, safety, and welfare of Virginia’s citizens and is needed in order to establish appropriate and necessary reporting requirements for all septic systems (or other on-site sewage disposal systems) located in the Chesapeake Bay Watershed that are taken off-line and connected to sewage collection systems. Additionally, this action is essential in supporting the Commonwealth’s Chesapeake Bay TMDL Phase III WIP. The addition of this reporting requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking the Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals.

**Substance**

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

The substance of this action is to amend the Sewage Collection and Treatment Regulations (9VAC25-790) to include a requirement for permitted sewage treatment works located within the Chesapeake Bay Watershed to report all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewerage systems. This requirement will ensure a more accurate count of nutrient reductions resulting from septic connected to sewer, which will assist with tracking the Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals.

**Issues**

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

The Sewage Collection and Treatment Regulations (9VAC25-790) do not currently contain any reporting requirements regarding on-site sewage systems taken off-line and connected to public sewerage systems.

The primary advantage of the proposed regulatory action is the implementation of a reporting requirement for all septic systems (or other on-site sewage disposal systems) located within the Chesapeake Bay watershed taken off-line and connected to sewerage collection systems. Including this requirement would provide the Department with more accurate information to track water quality goals. The regulation includes language to limit the requirement to the best of the permittee’s knowledge, thus the implementation of this requirement can largely be accomplished using existing resources and will impose a minimal financial burden. This will aid in protecting state waters, while limiting both the time and resources required to gather the required data, as well as preventing the regulation from creating compliance issues or being punitive to permittees. This is an advantage for the public, the regulated community, and the Commonwealth. Potential disadvantages would be limited to an increase on staff resources.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

The seven jurisdictions of the CBP partnership agreed to develop and implement WIPs in three phases to provide a framework for the goals and milestones necessary towards Chesapeake Bay restoration goals. This reporting requirement is directly mandated by the phase III WIP and is thus essential to complying with the CBP partnership agreement.

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. “Particularly affected” are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. “Locality” can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

There are no other state agencies particularly affected by this regulatory action.

Localities Particularly Affected

All counties, cities, and incorporated towns located within the Chesapeake Bay Watershed would be affected by this regulatory change, but none are expected to be particularly affected. If the proposed regulatory action is enacted the burden to track the data would be on the localities, and the burden to report the data to the Department, would be on the sewage treatment works,

Other Entities Particularly Affected

All permittees that are other entities would be affected by this regulatory change, but none are expected to be particularly affected. There are approximately 316 privately and publicly owned treatment works located within the Chesapeake Bay Watershed. If the proposed regulatory action is enacted these permittees would have to comply with the requirement to report the number of on-site sewage systems taken off-line and connected to sewerage systems that convey sewage to their facility. It is expected that much of the impact could be absorbed by existing resources.

For purposes of "Locality Particularly Affected" under the Board's statutes

There is no locality particularly affected under the Board's Statutes.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits) anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources.</p>	<p>It is anticipated that any fiscal impact on the Department as a result of these regulations can be absorbed with existing resources.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees, or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>There are no other state agencies particularly affected by this regulatory action.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>This requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer, which will assist with tracking the Commonwealth's progress towards water quality goals, including Chesapeake Bay watershed restoration goals.</p>

**Impact on Localities**

This analysis has been reporting on the ORM Economic Impact Form in Table 1a and Table 2.

**Impact on Other Entities**

This analysis has been reporting on the ORM Economic Impact Form in Table 1a, Table 3, and Table 4.

**Alternatives to Regulation**

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

No alternatives to this regulatory action were considered. The regulatory amendments are necessary to implement the Commonwealths’ Chesapeake Bay TMDL Phase III WIP.

This analysis has been reported on the ORM Economic Impact form in Table 1b and Table 4.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

**Regulatory Flexibility Analysis**

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

As mandated by initiative 53 of the Commonwealth’s TMDL Phase III WIP, the proposed regulation requires permitted sewage treatment works within the Chesapeake Bay Watershed to report the number of on-site sewage systems taken off-line and connected to sewerage systems that convey sewage to their facility. State law does not provide an exemption for small businesses for this requirement. In developing the proposed regulation consideration was given to minimizing requirements for all permitted sewage treatment works, including small businesses. The Department anticipates that implementation of the requirement to report the number of on-site sewage systems taken off-line and connected to sewerage systems that convey sewage to their facility will have a minimal economic impact on individual small businesses.

This analysis has been reporting on the ORM Economic Impact Form in Table 1b and Table 4.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

**Periodic Review and Small Business Impact Review Report of Findings**

*If you are using this form to report the result of a periodic review/small business impact review that is being conducted as part of this regulatory action, and was announced during the NOIRA stage, indicate whether the regulatory change meets the criteria set out in EO 19 and the ORM procedures, e.g., is*

*necessary for the protection of public health, safety, and welfare; minimizes the economic impact on small businesses consistent with the stated objectives of applicable law; and is clearly written and easily understandable. In addition, as required by § 2.2-4007.1 E and F of the Code of Virginia, 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.*

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No periodic review was announced during the NOIRA stage.

### Public Comment

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

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A public comment period ran from September 11, 2023, through October 11, 2023, and was extended to December 6, 2023. No public comments were received during this period.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

---

The Board is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal, (ii) any alternative approaches, (iii) the potential impacts of the regulation, and (iv) the Department's regulatory flexibility analysis stated in that section of this background document. Also, the 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 through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Morgan Emanuel, Regulatory and Guidance Analyst, DEQ Office of Water Planning, P.O. Box 1105, Richmond, Virginia 23218, phone: 804-494-9635 and [morgan.emanuel@deq.virginia.gov](mailto:morgan.emanuel@deq.virginia.gov). 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 not be held following the publication of this stage of this regulatory action.

## Detail of Changes

List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.

If a new VAC Chapter(s) is being promulgated and is not replacing an existing Chapter(s), use Table 2.

**Table 1: Changes to Existing VAC Chapter(s)**

<u>Current chapter-section number</u>	<u>New chapter-section number, if applicable</u>	<u>Current requirements in VAC</u>	<u>Change, intent, rationale, and likely impact of new requirements</u>
	9VAC25-790-985	None	<p>Add section 985: “On or before February 1, annually, every permitted sewage treatment works within the Chesapeake Bay Watershed shall report to the Department, to the best of their knowledge, the number of onsite sewage systems taken off-line and connected to sewerage systems that convey sewage to their facility during the previous calendar year.”</p> <p>This requirement will ensure a more accurate count of nutrient reductions resulting from septic systems connected to sewer. This will assist in tracking the Commonwealth’s water quality goals, including Chesapeake Bay water restoration goals. This requirement is directly mandated by the Commonwealth’s Chesapeake Bay TMDL Phase III WIP. Initiative 53 provides that “the Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems.”</p>

## Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory

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

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It is not expected that this regulation will have a direct impact on families.

**Project 7661 - Proposed**

**State Water Control Board**

**Proposed Amendment to Sewage Collection and Treatment Regulations to include a reporting requirement for all septic systems taken off-line and connected to sewage collection systems**

Chapter 790

Sewage Collection and Treatment Regulations

**9VAC25-790-985. On-site sewage systems connected to sewerage systems.**

On or before February 1, annually, every permitted sewage treatment works within the Chesapeake Bay Watershed shall report to the Department, to the best of their knowledge, the number of on-site sewage systems taken off-line and connected to sewerage systems that convey sewage to their facility during the previous calendar year.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-790
<b>VAC Chapter title(s)</b>	Sewage Collection and Treatment Regulations (9VAC25-790)
<b>Action title</b>	Amend Sewage Collection and Treatment Regulations to include a reporting requirement for all septic systems taken off-line and connected to sewerage systems
<b>Date this document prepared</b>	May 7, 2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Proposed

**Cost Benefit Analysis**

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

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

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

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Background:</b> The Sewage Collection and Treatment Regulations (9VAC25-790, SCAT Regulations) regulate sewerage systems and treatment works. The intent of this regulatory action is to determine how many septic systems (or other on-site sewage disposal systems) in the Chesapeake Bay watershed are taken off-line and the house, residence, or business is connected to a sewage treatment works that serves the locality. The data will be used to understand and quantify reductions in</p>
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nutrient loads and pollution that impact water quality in the Chesapeake Bay.

In July 2018, The Environmental Protection Agency (EPA) issued State-Basin Planning targets for nitrogen and phosphorus in Virginia's five river basins draining to the Chesapeake Bay. The Chesapeake Bay TMDL Phase III Watershed Implementation Plan (WIP) represents the Commonwealth's plan to achieve nutrient and sediment reductions needed to restore the Chesapeake Bay and its tidal tributaries.

Watershed Implementation Plans are roadmaps for how the seven jurisdictions (Delaware, the District of Columbia, Maryland, New York, Pennsylvania, Virginia, and West Virginia) in the Chesapeake Bay Program (CBP) will attain the Chesapeake Bay TMDL. The Bay TMDL is an informal planning tool used to establish CBP goals. WIPs were agreed to be developed and implemented in three phases, with EPA agreeing to provide an assessment of the WIP. EPA does not provide an approval or disapproval of a WIP.

Amending the SCAT Regulations will ensure a more accurate count of nutrient reductions that result from directing sewage from individual septic systems and other on-site sewage disposal systems to a centralized sewage treatment works. Sewage treatment works have been upgraded to improve nutrient removal capability and are subject to discharge limitations through the Department of Environmental Quality's (Department) Virginia Pollutant Discharge Elimination System (VPDES) permit program. Information about the number of septic systems that are no longer used to treat and dispose of sewage will assist with tracking the Commonwealth's progress towards water quality goals, including Chesapeake Bay watershed restoration goals, thus helping to certify that Virginia is meeting its reduction goals.

The requirement to amend the SCAT Regulations is directly mandated by the Commonwealth's Chesapeake Bay TMDL Phase III WIP. Initiative 53 provides that "the Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems."

**Direct Costs:** Unknown. However, it is expected to be minimal. Some permittees already track and report this information to the Department and/or the Virginia Department of Health (which regulates septic and on-site sewage systems). Other permittees may have staff who will gather data about and report the number of on-site sewage systems taken off-line and connected to sewerage systems that convey to their facility.

	<p>Based upon input from members of the Regulatory Advisory Panel (RAP), implementing the requirement in the amendment will take a minimal amount of time (a few hours to one day in most cases) for staff to compile the data, rather than imposing a cost and associated financial burden on their operations. Members of the RAP expect the cost and burden to be minimal.</p> <p><b>Indirect Costs:</b> Members of the RAP stated they would be able to absorb the minimal cost (staff time) of collecting and reporting the data required by this change. Consequently, this change would not result in any additional costs that would be passed on to ratepayers and there are not any indirect costs associated with the change.</p> <p><b>Direct Benefits:</b> This proposal meets the mandate of the Commonwealth’s Chesapeake Bay TMDL Phase III WIP (Initiative 53) and ensures a more accurate count of nutrient reductions resulting from fewer septic systems being used to dispose of sewage. The data will assist with tracking Commonwealth’s progress towards water quality goals, including Chesapeake Bay watershed restoration goals.</p> <p><b>Indirect Benefit:</b> This proposal may indirectly benefit the Commonwealth by capturing more information on the overall reduction of nutrients to state waters. For owners of sewage treatment works and other local government officials, they will benefit from having better data about sewage disposal on individual properties and knowing which properties no longer use septic systems.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See above regarding direct costs. No indirect costs are expected due to the limited extent of the reporting requirement.	(b) See above regarding direct and indirect benefits.
(3) Net Monetized Benefit	Not Applicable	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	DEQ procedures, staff, and RAP members	

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

(1) Direct & Indirect Costs & Benefits (Monetized)	This information is not currently reported to the Department. Thus, there currently are no costs or benefits.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable	(b) Not applicable
(3) Net Monetized Benefit	Not applicable	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	The Commonwealth’s Chesapeake Bay TMDL Phase III WIP (Initiative 53) requires that “[t]he Commonwealth will initiate a regulatory action to amend the existing Sewage Collection and Treatment Regulations (9VAC25-790-10 et seq.) to include a reporting requirement for all septic systems (or other on-site sewage disposal systems) taken off-line and connected to sewage collection systems.” Thus, no non-regulatory options were determined to be available.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Not applicable	(b) Not applicable
(3) Net Monetized Benefit	Not Applicable	
(4) Other Costs & Benefits (Non-Monetized)	Not Applicable	
(5) Information Sources	Commonwealth TMDL Phase III (Initiative 53)	

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

(1) Direct & Indirect Costs & Benefits (Monetized)	Available general cost and benefit data for local governments operating a sewage treatment facility is provided in Table 1a.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See table 1a regarding direct costs. No indirect costs are expected due to the limited extent of the reporting requirement.	(b) See table 1a regarding direct and indirect benefits
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Assistance	N/A	
(5) Information Sources	DEQ procedures, staff, and RAP members	

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs & Benefits (Monetized)	Families are not subject to the SCAT Regulations. They would not be responsible for the reporting requirement. No direct costs or indirect costs or benefit impacts on families are expected.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None	(b) This proposal may indirectly benefit the Commonwealth by capturing more information on the overall reduction of nutrients to state waters.

(3) Other Costs & Benefits (Non-Monetized)	N/A
(4) Information Sources	DEQ procedures, staff, and RAP members

**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

(1) Direct & Indirect Costs & Benefits (Monetized)	Presently there are approximately 316 publicly and privately owned public treatment works in the Chesapeake Bay watershed. Information on permit applications submitted to the Department does not indicate if the owner and operation is a “small business.” However, a small business would experience the same costs and benefits as identified in table 1a.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) see table 1a.	(b) see table 1a
(3) Other Costs & Benefits (Non-Monetized)	See table 1a	
(4) Alternatives	N/A	
(5) Information Sources	DEQ procedures, staff, and RAP members	

**Changes to Number of Regulatory Requirements**

**Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

*Change in Regulatory Requirements*

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions	Subtractions	Total Net Change in Requirements
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9VAC25-790-985	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	0	1 <sup>A</sup>	0	1
	<b>(D/R):</b>	0	0	0	0
				<b>Grand Total of Changes in Requirements:</b>	<b>(M/A):0</b> <b>(D/A):0</b> <b>(M/R):1</b> <b>(D/R):0</b>

<sup>A</sup> This proposed amendment to the SCAT Regulations is necessary to implement the Commonwealth's Chesapeake Bay TMDL Phase III WIP (Initiative 53). It will be added as a new section, 9VAC25-790-985, in Part IV, Reports and Forms.

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself.

**(D/A):** Discretionary requirements affecting agency itself.

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies.

**(D/R):** Discretionary requirements affecting external parties, including other agencies.

*Cost Reductions or Increases (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Requirement</b>	<b>Initial Cost</b>	<b>New Cost</b>	<b>Overall Cost Savings/Increases</b>
9VAC25-790-985	0	0	0	0

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Change</b>	<b>Overview of How It Reduces or Increases Regulatory Burden</b>
9VAC25-790-985	NA	As mandated by Initiative 53 of the Commonwealth's Chesapeake Bay TMDL Phase III WIP, the proposed regulation requires every permitted sewage treatment works within the Chesapeake Bay watershed to report to the

		<p>Department the number of on-site sewage systems taken off-line and connected to sewerage systems that convey sewage to their facility. The addition of this reporting requirement was discussed with stakeholders who served on a Regulatory Advisory Panel to understand and minimize the impact of this requirement. For members of the RAP, compiling and reporting the required data is expected to take a few hours to no more than a day, thus creating a minimal burden that can be absorbed with existing resources. RAP members did cite benefits (see table 1a) of having better information about septic systems that have been replaced by connecting the house or small business to a sewage treatment works.</p>
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*Length of Guidance Documents (only applicable if guidance document is being revised)*

<b><u>Title of Guidance Document</u></b>	<b><u>Original Word Count</u></b>	<b><u>New Word Count</u></b>	<b><u>Net Change in Word Count</u></b>
NA			

**TAB L**



*Commonwealth of Virginia*

***VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY***

1111 E. Main Street, Suite 1400, Richmond, Virginia 23219

P.O. Box 1105, Richmond, Virginia 23218

(800) 592-5482

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Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director  
(804) 698-4020

**MEMORANDUM**

**TO:** State Water Control Board Members

**FROM:** Elizabeth McKercher

Handwritten signature of Elizabeth McKercher in black ink.

Director, Water Planning Division

**DATE:** May 14, 2024

**SUBJECT:** Petition for Establishment of a Regulation or Policy Interpreting the Definition of a Nontidal Wetland under 9VAC25-830-40, 9VAC 25-830-80, and Fairfax County Ordinance 118-6-1(q)

**I. Petition for New or Amended Regulations**

By letter dated and received March 11, 2024, David W. Schnare submitted a petition to the State Water Control Board (Board) requesting the Board establish a regulation or policy interpreting the definition of a nontidal wetlands. See Attachment 1.

Pursuant to §2.2-4007 of the Code of Virginia and the Public Participation Guidelines (9VAC25-11-60), any person may petition an agency to request the agency develop a new regulation or amend an existing regulation. In this case, Mr. Schnare requested the Board establish a policy or rule or amend the existing Chesapeake Bay Preservation Area Designation and Management Regulation (Bay Act Regulation) (9VAC25-830).

Mr. Schnare's petition, which was provided in the context of a current matter under review by the Fairfax County Chesapeake Bay Exception Review Committee, requests clarification on the definition of nontidal wetlands. Mr. Schnare contends the Board should establish by rule or policy answers regarding determining a nontidal wetland and a Resource Protection Area (RPA) delineation (Request Number 1 and 2) or in the absence thereof an amendment to the definition of nontidal wetland under 9VAC25-830-40, 9VAC25-830-80, and Fairfax County Ordinance 118-6-1(q) (Request Number 3).

In accordance with provisions of the Administrative Process Act (§ 2.2-4007 of the Code of Virginia), a 21-day public comment period on the petition was published in the *Virginia Register of Regulations* on April 9, 2024, and written comments were accepted through April 29<sup>th</sup>, 2024. Members of the public could submit comments during the period through the Virginia Regulatory Town Hall public comment forum or by sending mail or email directly to DEQ.

## II. Summary of Comments Received on the Petition

### A. Comments in Support:

No comments were received in support of the petition.

### B. Comments in Opposition:

Thirty-two (32) separate comments were submitted in opposition to the petition. Twenty-six (26) were received via the Virginia Regulatory Town Hall website public comment forum with eight (8) submitted via e-mail including two (2) which were duplicates submitted via Town Hall also. Of the thirty-two comments, fourteen (14) were submitted on behalf of seventeen (17) organizations: Assateague Coastkeeper at Assateague Coastal Trust, Chesapeake Bay Foundation, Environmental Defense Fund, Friends of Accotink Creek, Friends of Holmes Run, Friends of Indian River, James River Association, Nature Forward, Potomac Conservancy, Potomac Riverkeeper Network, Sierra Club, Southern Environmental Law Center, Virginia Conservation Network, Virginia Transportation Construction Alliance, Waterkeepers Chesapeake, Wetlands Watch, and Wild Virginia.

The below bullets summarize the main issues in opposition to the petition:

- 1) The U.S. Supreme Courts's *Sacket v. Environmental Protection Agency (Sackett<sup>1</sup>)* decision did not affect state law definition of wetlands
- 2) *Sackett* did not change a locality's ability to protect land under the Chesapeake Bay Preservation Act (Bay Act)
- 3) DEQ regulations and guidance regarding delineations are sufficiently clear
- 4) The locality exercised its discretionary Bay Act authority in the pending matter
- 5) The Board should not intervene during a pending locality decision
- 6) *Sackett* does not change technical considerations for RPA delineation
- 7) DEQ's Bay Act program is set up and operating as intended to address any locality Bay Act issues and therefore Board intervention is not necessary
- 8) The requested definition would undermine protection for wetlands which are important for absorbing water, maintaining ecosystems, and providing critical habitat.

## III. The Definition and Delineation of a Nontidal Wetland

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<sup>1</sup> 598 U.S. 651 (2023)

Nontidal wetlands, “connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow” are included in an RPA subject to the requirements of the Bay Act and accompanying regulations. Mr. Schnare’s petition raises requests, including a possible regulatory amendment, related to the definition of nontidal wetlands and in the light of the current definition, clarification on the delineation of an RPA .

**A. Chesapeake Bay Preservation Act and Chesapeake Bay Preservation Act Designation and Management Regulations**

The Chesapeake Bay Preservation Act (Bay Act), enacted in 1988, establishes a framework for the 84 defined localities of “Tidewater Virginia” to incorporate water quality protection measures into their respective comprehensive plans, zoning ordinances, and subdivision ordinances. Tidewater Virginia localities are required to “establish programs, in accordance with criteria established by the Commonwealth, that define and protect certain lands, hereinafter called Chesapeake Bay Preservation Areas, which if improperly developed may result in substantial damage to the water quality of the Chesapeake Bay and its tributaries.”<sup>2</sup>

Chesapeake Bay Preservation Areas (CBPAs) “means an area delineated by a local government in accordance with criteria established” by the Board pursuant to Va. Code § 62.1-44.15:72,<sup>3</sup> which provides for the Board to “establish criteria for use by local governments to determine the ecological and geographic extent of Chesapeake Bay Preservation Areas.”<sup>4</sup>

Additionally, the Bay Act provides that “local governments have the initiative for planning and for implementing the provisions of this article, and the Commonwealth shall act primarily in a supportive role by providing oversight for local governmental programs, by establishing criteria as required by this article, and by providing those resources necessary to carry out and enforce the provisions of this article.”<sup>5</sup>

The Chesapeake Bay Preservation Act Designation and Management Regulations (9VAC25-830 et seq.) (Bay Act Regulations) establish that CBPAs shall consist of a Resource Management Area and Resource Protection Area (RPA).<sup>6</sup>

The Bay Act Regulations, at 9VAC25-830-40, define an RPA as:

“[T]hat component of the Chesapeake Bay Preservation Area comprised of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts that may result in significant degradation to the quality of state waters.”

The Bay Act Regulations, at 9VAC 25-830-80, provides that RPAs:

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<sup>2</sup> Va Code § 62.1-45.15:67

<sup>3</sup> Va Code § 62.1-45.15:68

<sup>4</sup> Va Code § 62.1-45.15:72

<sup>5</sup> Va Code § 62.1-45.15:67

<sup>6</sup> 9VAC25-830-40

“[S]hall consist of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of state waters.”

...

and shall, among other water bodies, include “[n]ontidal wetlands connected by surface flow and contiguous to tidal wetlands or water bodies with perennial flow.”

...

and can include “[s]uch other lands considered by the local government to meet the provisions of subsection A of this section and to be necessary to protect the quality of state waters.”

The Bay Act Regulations, at 9VAC25-830-40 define “nontidal wetlands” as:

“[T]hose wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b.”

The Bay Act Regulations further includes in the RPA definition, at 9VAC25-830-80, “[s]uch other lands considered by the local government to meet the provisions of subsection A of this section and to be necessary to protect the quality of state waters” and a “buffer of not less than 100 feet in width located adjacent to and landward of these components.”

Local governments during the review of a project shall, as established in 9VAC25-830-110, “ensure or confirm that (i) a reliable, site-specific evaluation is conducted to determine whether water bodies on or adjacent to the development site have perennial flow and (ii) Resource Protection Area boundaries are adjusted, as necessary, on the site, based on this evaluation of the site.”

Areas identified as an RPA are subject to the specific development criteria, in 9VAC25-830-140, including the allowance of only certain types of development or modification absent an exception being granted.

## **B. Other Relevant Authority and Guidance**

DEQ has established several guidance documents to aid localities in the implementation of their Bay Act program. The “Resource Protection Areas: Nontidal Wetlands”<sup>7</sup> guidance document outlines which nontidal wetlands are required to be included within an RPA. The guidance document primarily identifies scenarios addressing which nontidal wetlands are connected and contiguous as required by the Bay Act Regulations and are therefore RPA.

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<sup>7</sup> [Resource Protection Areas-Nontidal Wetlands Bay Act Guidance](https://www.deq.virginia.gov/home/showpublisheddocument/22569/638430806129970000)  
(<https://www.deq.virginia.gov/home/showpublisheddocument/22569/638430806129970000>)

Specifically, the guidance recognizes “[n]ontidal wetlands principally include freshwater marshes, ponds, shrub and wooded swamps, bogs, and bottomland hardwood forests. Nontidal wetlands represent a complex assemblage of inland wet environments. Wetlands falling under the jurisdiction of the US Army Corp of Engineers (Corps of Engineers) and the Virginia Department of Environmental Quality (DEQ) are delineated by trained experts.”

The “Administration Procedures for the Designation and Refinement of Chesapeake Bay Preservation Area Boundaries”<sup>8</sup> provides guidance on the mapping of CBPAs generally and on a particular site and the “Resource Protection Area: Onsite Buffer Area Delineation” guidance document outlines “the procedure for physically measuring the buffer area component of the RPA on a development site.”<sup>9</sup>

Wetlands in Virginia are regulated by State Water Control Law under Article 2.2 “Virginia Water Resources and Protection Program” and are defined under § 62.1-44.3 of the Code of Virginia as:

“[T]hose areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.”

The Virginia Water Protection Permit Program (VWPP) Regulations, at 9VAC25-210-10, further specifically define “nontidal wetlands” as:

“[T]hose wetlands other than tidal wetlands that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 40 CFR 230.3(t). Wetlands generally include swamps, marshes, bogs, and similar areas.”

As required by §62.1-44.15:21 of the Code of Virginia and 9VAC25-210-45, the VWPP program follows the procedure for the delineation of wetlands as detailed in the U.S. Army Corps of Engineers’ 1987 “Wetlands Delineation Manual”<sup>10</sup> (’87 Manual) and applicable Regional Supplements.<sup>11</sup> The ’87 Manual provides technical guidelines and methods for wetlands delineations. Additionally, a wetland delineation remains effective for five years or the term of permit if issued within the five years.<sup>12</sup>

### **C. The U.S. Supreme Court’s Decision in *Sackett v. Environmental Protection Agency***

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<sup>8</sup> [Administrative Procedures for the Designation and Refinement of Chesapeake Bay Preservation Boundaries Bay Act Guidance \(https://www.deq.virginia.gov/home/showpublisheddocument/22575/638430806262000000\)](https://www.deq.virginia.gov/home/showpublisheddocument/22575/638430806262000000)

<sup>9</sup> [Resource Protection Area-Onsite Buffer Area Delineation Bay Act Guidance \(https://www.deq.virginia.gov/home/showpublisheddocument/22568/638430806128570000\)](https://www.deq.virginia.gov/home/showpublisheddocument/22568/638430806128570000)

<sup>10</sup> [Corps of Engineers Wetlands Delineation Manual \(https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4530\)](https://usace.contentdm.oclc.org/digital/collection/p266001coll1/id/4530)

<sup>11</sup> [Regional Supplements to Corps Delineation Manual \(https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg\\_supp/\)](https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/reg_supp/)

<sup>12</sup> Va Code § 62.1-45.15:21

On May 25, 2023, the United States Supreme Court issued its decision in the case titled *Sackett v. Environmental Protection Agency (Sackett)*<sup>13</sup>. The question presented to the Supreme Court was the jurisdictional extent of certain wetlands under the federal Clean Water Act (CWA). The Court determined that the jurisdiction of the CWA "extends only to those wetlands with a continuous surface connection to bodies that are waters of the United States in their own right, such that they are indistinguishable from those waters." Thus, the decision altered the jurisdictional extent of wetlands subject to the CWA at the federal level.

The Supreme Court decision did not involve or alter the definition of wetlands under Virginia Code or any accompanying regulations. Also, it did not invalidate the definition of a wetland or challenge the definition of wetland within the CWA. Additionally, the decision did not change the technical considerations in delineating a wetland. EPA did promulgate a revision to 40 CFR 328.3 post-*Sackett* related to "significant nexus" and "adjacent" but left unchanged the underlining definition of wetland.<sup>14</sup> The '87 Manual and Regional Supplements were not amended as result of *Sackett* either.

On June 29, 2023, DEQ Director Rolband issued a memorandum to stakeholders in the Commonwealth providing that "neither State Law or the VWPP regulation is affected by the *Sackett* decision" and that the decision does "not affect the definition of RPAs" under the Bay Act regulations.<sup>15</sup>

#### IV. Conclusion

The specific requests identified in the petition are for the Board to establish by policy or rule a position on:

(1) whether an Exception Review Committee established under the Chesapeake Bay Preservation Act must only recognize a Resource Protection Area buffer measured from a nontidal wetland in which the geographic extents of the nontidal wetland was determined independent of federal jurisdictional determinations made under the Federal Clean Water Act, or studies intended to support such jurisdictional determinations, and addresses all elements identified in 9VAC25-830-40 and relevant local ordinances; and,

(2) whether an applicant for an exception under Fairfax County Ordinance § 118-6-1 can rely on the AGCP<sup>16</sup> Manual methodologies in order to determine the existence of a nontidal wetland as defined under 33 CFR 328.3 Fairfax County Ordinance § 118-1-6(q), to wit, the presence or absence of a prevalence of vegetation typically adapted for life in saturated soil conditions under normal circumstances[; and,]

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<sup>13</sup> 598 U.S. 651 (2023)

<sup>14</sup> 40 CFR 328.3; 88 Fed. Reg. 61,964 (Sept. 8, 2023); [EPA website outlining post-\*Sackett\* amendments \(https://www.epa.gov/wotus/amendments-2023-rule\)](https://www.epa.gov/wotus/amendments-2023-rule)

<sup>15</sup> [Post \*Sackett\* DEQ Memo to Stakeholders \(https://www.deq.virginia.gov/home/showpublisheddocument/18677\)](https://www.deq.virginia.gov/home/showpublisheddocument/18677)

<sup>16</sup> See, <https://usace.contentdm.oclc.org/utills/getfile/collection/p266001coll1/id/7594> which covers the eastern side of Virginia. The western side of Virginia is addressed by the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (ERDC/EL TR-12-9) available at <https://usace.contentdm.oclc.org/utills/getfile/collection/p266001coll1/id/7594>

(3) . . . to amend Virginia Administrative Code 9VAC25-830-40, to read: "Nontidal wetlands" means those ~~wetlands~~ lands other than tidal wetlands whose hydrophytic vegetation indicators, hydric soil indicators and wetland hydrology indicators reveal the subject land is a wetland as described in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (ERDC/EL TR-12-9) or the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region. 10 (ERDC/EL TR-10-20) or later versions thereof.

As outlined below, Requests Number 1 and Number 2 in the petition are not of a nature for action by the Board pursuant to §2.2-4007 of the Code of Virginia and Request Number 3 for a regulatory amendment to the definition of nontidal wetlands would create an improper, inconsistent, and unnecessary revision to the Bay Act Regulations.

Regarding request Number 1 in the petition, this request is not of a nature for action by the Board pursuant to §2.2-4007 of the Code of Virginia and the Public Participation Guidelines (9VAC25-11-60) as it does not relate to establishing or amending a regulation. This request is best addressed through guidance and technical assistance as provided by DEQ.

Regarding the specifics of the assistance requested, it should be noted that *Sackett* decision did not alter the definition of or technical considerations for the identification of a wetland in either Virginia law or regulations. In *Sackett*, the Court was considering a question of jurisdiction, specifically, which wetlands were subject to the CWA and not the definition of wetlands. Indeed, the Court maintained the factual finding that there are wetlands on the plaintiff's property, just not wetlands subject to the CWA. Thus, *Sackett* has not altered the definition of a wetland, nontidal wetland, or the basis for delineating such under the requirements of Virginia's water programs and DEQ has confirmed this to stakeholders.<sup>17</sup>

Overall, a wetland delineation done in accordance with established technical guidelines and procedures even if also establishing the extent of jurisdiction under the CWA would be a proper delineation for identifying a nontidal wetland for inclusion in the RPA and this remains unchanged after *Sackett*.

Site-specific delineation of RPA features including the extent of a buffer should be done in accordance with established DEQ guidance provided by both the Bay Act and VWPP programs. This includes applying the technical guidelines and methods for delineating a wetland as well as guidance on determining or measuring the extent of the 100' foot buffer adjacent to the wetland. DEQ provides both RPA and wetlands delineation training and when requested by a locality, technical assistance in reviewing an RPA delineation including field verification.<sup>18</sup> DEQ has also established a new voluntary Virginia State Waters Delineator Certification program.<sup>19</sup>

In no case should the delineation of an RPA feature or determination of an RPA boundary be based upon the locality developed Chesapeake Bay Preservation Areas (CBPA) map. While localities

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<sup>17</sup> [Post Sackett DEQ Memo to Stakeholders \(https://www.deq.virginia.gov/home/showpublisheddocument/18677\)](https://www.deq.virginia.gov/home/showpublisheddocument/18677)

<sup>18</sup> [DEQ Bay Act Local Program Assistance Website \(https://www.deq.virginia.gov/our-programs/water/chesapeake-bay/chesapeake-bay-preservation-act/local-program-assistance\)](https://www.deq.virginia.gov/our-programs/water/chesapeake-bay/chesapeake-bay-preservation-act/local-program-assistance)

<sup>19</sup> [DEQ Wetlands & Streams Webpage \(https://www.deq.virginia.gov/permits/water/wetlands-streams-vwpp/\)](https://www.deq.virginia.gov/permits/water/wetlands-streams-vwpp/)

are required to develop a jurisdiction-wide map outlining RPAs' areas,<sup>20</sup> these maps serve as a guide to aid in identifying properties which may have an RPA and site-specific delineations are required during the plan of development process to ensure RPA boundaries are adjusted, as necessary, on the site, based on this evaluation of the site.<sup>21</sup> Thus, the boundary determination for a proposed development would not and should not be measured based upon a jurisdiction-wide CBPA map. In particular, Fairfax County on its jurisdiction-wide CBPA map provides an RPA Plan number which correlates to a site-specific conducted refinement where available and a disclaimer that such map is a "legal description" of such features and should not be used for design purposes.<sup>22</sup>

While the Bay Act Regulations do not specify a timeframe for the age of an RPA delineation, any such delineation must be reviewed during the plan of development review process and regardless of timing, be reflective of current site conditions at the time of the review.<sup>23</sup> Typically, DEQ has informed localities that any delineation specifically greater than five years old (consistent with other provisions regarding the validity of site plans<sup>24</sup> or wetlands delineations<sup>25</sup>) should likely be updated unless confirmed to be accurate of current site conditions. Regarding the 2003 delineation, the Regional Supplements which provide additional technical detail regarding delineations were finalized after 2003.<sup>26</sup>

Regarding request Number 2 in the petition, this request is not of a nature for action by the Board pursuant to §2.2-4007 of the Code of Virginia and the Public Participation Guidelines (9VAC25-11-60) as it does not relate to establishing or amending a regulation. This request is best addressed through guidance and technical assistance as provided by DEQ.

Regarding the specifics of the assistance requested, a site-specific delineation of nontidal wetlands should be completed in accordance with established technical guidelines and methods which includes consideration of vegetation identified within the feature, as well as hydrology and soils. Moreover, given the complexity of wetlands and parameters for a wetland delineation, a specific evaluation of field conditions is essential to any proper delineation. This includes utilizing the '87 Manual and Regional Supplements noted above. This also remains unchanged post-*Sackett*.

A question regarding the specific interpretation of a locality's ordinance is left with the locality. Although the Bay Act requires the Board to ensure that local government's programs are in accordance with its provisions, it does not authorize the Board to interpret, apply, or enforce local ordinance provisions. Questions regarding the specific application or confines of a local ordinance must be decided by the locality and its legal counsel. Additionally, localities may designate such other lands in the inclusion of what constitutes an RPA<sup>27</sup> and the determination of such is with the locality.

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<sup>20</sup> 9VAC25-830-60(A)(1)

<sup>21</sup> 9VAC25-830-110

<sup>22</sup> See Attachment 3

<sup>23</sup> 9VAC25-830-110

<sup>24</sup> Va Code § 15.2-2261

<sup>25</sup> Va Code § 62.1-45.15:21

<sup>26</sup> [Updating Regional Supplements to Corps of Engineers Wetland Delineation Manual \(https://apps.dtic.mil/sti/pdfs/ADA571250.pdf\)](https://apps.dtic.mil/sti/pdfs/ADA571250.pdf)

<sup>27</sup> 9VAC25-830-80(A), (B)(5)

Regarding request Number 3 in the petition, this request is of a nature for consideration by the Board. However, the requested amended definition of nontidal wetlands in 9VAC25-830-40 would create an improper, inconsistent, and unnecessary revision to the definition.

The proposed definition would be inconsistent with definition of wetlands under State Water Control Law. As noted above, Virginia Code provides a specific narrative definition of wetlands that is consistent with the definition provided for in the Bay Act Regulations.

Additionally, the proposed definition would be inconsistent with the mirroring narrative definition of nontidal wetlands under VWPP Regulations. Ensuring continuity between these definitions is essential given the interplay of these programs, particularly as the Bay Act Regulations and program defer to the VWPP requirements, including the technical framework and guidance, for a wetland delineation. Thus, any proper consideration of a revision to definition of nontidal wetlands should not occur within the Bay Act regulations.

As outlined above, *Sackett* did not involve or change Virginia law and even under the CWA did not change the definition of wetlands. As noted above, in its post-*Sackett* rulemaking, EPA did not change the definition of wetlands. Indeed, the definition has remained unchanged since the original promulgation in 1986.<sup>28</sup> Thus, *Sackett* does not compel a regulatory amendment or change the way wetlands are delineated within the Commonwealth including under the Bay Act Regulations.

Also, while practically the proposed definition in the petition does include technical considerations for delineating wetlands, such language would create potentially an inappropriate narrowing of the definition of wetlands and such definition includes language and references that are best identified in guidance and technical manuals. The '87 Manual and accompanying Regional Supplements do provide additional technical guidance for delineation and should be utilized in making such delineation but are not a proper source for determining the legal definition of a nontidal wetland.

## **V. Recommendation**

After review of the above facts and information, DEQ staff recommend the petition be denied.

Attachment 1 – Petition from David W. Schnare

Attachment 2 – Summary of Public Comments

Attachment 3 - Site-Specific RPA Delineation Cover Sheet and Fairfax County RPA Map

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<sup>28</sup> 51 Fed. Reg. 41,251 (Nov. 18, 1986)

**Attachment 1**  
**Petition from David W. Schnare**

**BEFORE THE STATE WATER CONTROL BOARD  
OF THE COMMONWEALTH OF VIRGINIA**

**PETITION FOR ESTABLISHMENT OF A REGULATION OR POLICY  
INTERPRETING THE DEFINITION OF A NONTIDAL WETLAND UNDER  
9VAC25-830-40, 9VAC25-830-80, AND FAIRFAX COUNTY ORDINANCE 118-6-1(q)**

**March 11, 2024**

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**Introduction and Summary**

Your Petitioner is the Committee Member representing the Springfield Magisterial District on the Chesapeake Bay Preservation Act Exception Review Committee of Fairfax County.<sup>1</sup> As described below, Petitioner and his fellow Committee Members held a public hearing on an exception request that was encumbered by significant ambiguities in relevant code and particularly by the recent U.S. Supreme Court decision in *Sackett v. EPA*, 598 US 654 (2023). This Petition requests that, under the authorities of the Chesapeake Bay Preservation Act (“the Act”), the State Water Control Board (“the Board”) establish regulations or policies identifying the technical criteria or methodologies to be used when delineating Resource Protection Area (“RPA”) buffers associated with nontidal wetlands in a manner that would resolve the ambiguities necessarily confronted by the ERC.

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<sup>1</sup> Appointed pursuant to Fairfax County Municipal Code Section 118-7-3, as authorized under the authority and mandates of the Chesapeake Bay Preservation Act, Article 2.5 (§ 62.1-44.15:67 et seq.) of Chapter 3.1 of Title 62.1 [formerly Article 1 (§ 10.1-2100, et seq.) of Chapter 21 of Title 10.1], of the Virginia Code, with duties of the Members as established in Fairfax County Municipal Code Section 118-7-7.

## **Legal Basis for the Petition**

Your Petitioner brings this matter to the Board pursuant to the Virginia Constitution, Article I, Section 12, which established the right to petition the government for the redress of grievances. Your Petitioner also respectfully suggests that the Board has a mandatory duty to respond to this Petition under Virginia Code §§ 62.1-44.15:67 & 62.1-44.15:72.

## **Issues Raised in the Grievance Brought**

On March 6, 2024, the Fairfax County Chesapeake Bay Preservation Act Exception Review Committee (“the ERC”) conducted a public hearing regarding Encroachment Exception Request #WAIV-2023-00514. This request sought an exception for an 20 x 40 ft. (800 sq. ft.) concrete-surfaced hockey practice rink which, due to the necessary safety netting and potential for 80 mile per hour puck escape beyond the netting, could not be safely placed elsewhere on the property. The question arose as to whether this small hockey rink was within or outside the 50 foot seaward portion of an RPA.

The ERC confronted two ambiguities:

(1) Without being arbitrary and capricious, can the ERC rely on an RPA buffer based on a now defunct 2003 Clean Water Act (CWA) Section 404 jurisdictional determination of a wetland, or must it rely on the county’s 2003 RPA delineation that was based on distance from the bank of the perennial stream; and,

(2) in a new RPA determination the Applicant is intending to have done, what defines a nontidal wetland under the laws of the Commonwealth and, specifically, what are the normal circumstances found on the property with regard to the kind of “prevalen[t] vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to Sec. 404 of the Federal Clean Water Act, in 33 CFR 328.3b, dated November 13, 1986, or as subsequently amended,” where 33 CFR 328.3b fails to define a nontidal wetland or the vegetation necessary to support a finding of a wetland?

In light of these ambiguities, the ERC deferred a decision on the exception request in order to allow the Applicant to conduct a new RPA determination under current law. Both the Applicant, the county staff and the ERC would be materially assisted if the Board would timely respond to this Petition, fulfilling its duties under Virginia Code § 62.1-44.15:72.

## **Background**

### **Reliance on a Now Defunct CWA 404 Jurisdictional Determination**

The Applicant first prepared his exception request based on the 2003 RPA boundaries identified on the still current Fairfax County “Watersheds & RPAs” map,<sup>2</sup> showing the 2003 RPA boundary as a line 100 feet from the bank of Flatlick Branch (“the County RPA”). Based on this map, the small hockey rink would sit within the 100 foot buffer, but outside the 50 foot seaward portion of the buffer, and thus would be subject to an exception. As discussed immediately below, the County staff did not rely on the County RPA but instead relied on a

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<sup>2</sup> See, <https://www.arcgis.com/apps/Viewer/index.html?appid=67ca30a491084ddf92db292337bd87e1>

purported revision of the County RPA (“the CWA RPA”) based on a report prepared to support a CWA Jurisdictional Delineation of waters and wetlands. Under the CWA RPA, the small hockey rink would still sit within the 100 foot buffer, but would now be within the 50 foot seaward portion of the buffer, and thus would not be subject to an exception.<sup>3</sup>

The County staff chose not to rely on the County RPA, having discovered a set of documents (“Doc. C8-2”)<sup>4</sup> that include the July 7, 2003 Preservation Area Plan for the Thompson Road Assemblage, a report (“the WSSI Report”) specifically prepared to support the survey-located boundaries of CWA 404 jurisdictional wetlands on the Thompson assemblage, the final Federal jurisdictional delineation of that nontidal wetland described in the WSSI Report, and a plat prepared by WSSI that purports to revise the RPA buffer boundaries based on the CWA 404 jurisdictional delineation. These various parts of Doc. C8-2 were all prepared prior to development of the Thompson Road Assemblage and thus before construction of the applicant’s home or the small hockey rink.

The boundaries of the nontidal wetland identified in the WSSI Report were based exclusively on the Corps of Engineers Wetlands Delineation Manual, Technical Report Y-87-1 (1987 Manual). Delineation of wetlands pursuant to this Manual relies exclusively on three elements, the hydrophytic vegetation, wetland hydrology and hydric soils on the site.<sup>5</sup>

A close examination of the WSSI Report indicates the sole basis for designation of a nontidal wetland on the Applicant’s property is the hydrology of the site and not the vegetation found on the site.<sup>6</sup>

The wetland purported to be on the Applicant’s property and used to create the CWA RPA is identified on the related plat as Point D9, a Palustrine-forested wetland (“PFO”), and is highlighted in Figure 1.

The WSSI Report states this PFO is “dominated by trees” and has the “[h]ydrology [that] is primarily supported by groundwater associated with stream, and secondarily by possible seepage associated with the adjacent sewer line.”<sup>7</sup> Nothing in the WSSI report indicates this PFO hydrology includes any form of surface flow off the PFO and into Flatlick Branch. The plat does not indicate the presence of any form of surface flow, whether perennial or intermittent. The WSSI Report based its purported CWA RPA on “the connection of all wetlands and non-tributary (i.e., intermittent) streams leading into the perennial stream.”<sup>8</sup> The only “connection” between the PFO and Flatlick Branch is the “groundwater associated with [the] stream” and sewer line seepage contaminating that groundwater. The report names no hydrophytic vegetation on the site.

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<sup>3</sup> See, 9VAC25-830-140 (4)(b)(4), applying § (4)(a)(3) The encroachment may not extend into the seaward 50 feet of the buffer area.

<sup>4</sup> See, Hearing Document c8-2-rpa-delineation-9820-rpa-001-1, at <https://www.fairfaxcounty.gov/landdevelopment/sites/landdevelopment/files/Assets/documents/pdf/erc/percheron-lane/c8-2-rpa-delineation-9820-rpa-001-1.pdf>

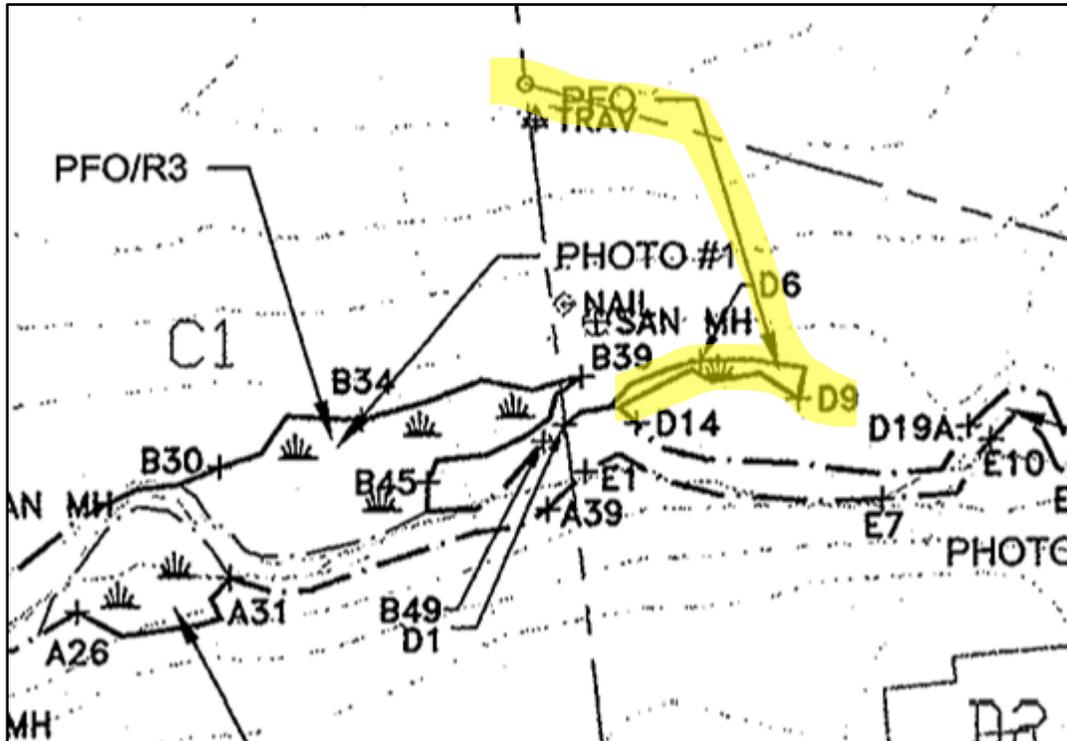
<sup>5</sup> *Id.* page 4 of the March 14, 2003, WSSI Letter to Peter T. Johnson.

<sup>6</sup> *Id.* page 5.

<sup>7</sup> *Id.* page 3.

<sup>8</sup> *Id.* page 5.

Figure 1



Your Petitioner argues that the ERC cannot base its decision on the CWA RPA delineation without being arbitrary and capricious as recent U.S. Supreme Court jurisprudence has invalidated the definition of a nontidal wetland used to set the CWA RPA, and the CWA § 404 jurisdictional wetland delineation is otherwise not based on Virginia code or regulation, and thus the CWA RPA is itself invalid.

The nontidal wetland definitions used to support the CWA RPA no longer remain appropriate by law, in light of the recent U.S. Supreme Court decision in *Sackett v. EPA*, 598 US 654 (2023). Specifically, the *Sackett* decision redefined the term “wetlands” that are within the jurisdiction of the Clean Water Act, Section 404. Under *Sackett*, a Section 404 wetland must have “a continuous surface connection with that water [of the U.S.], making it difficult to determine where the ‘water’ ends and the ‘wetland’ begins.”<sup>9</sup> The WSSI report clearly documents the lack of a “continuous surface connection” and thus the WSSI CWA Section 404 jurisdictional wetlands delineations used to define the CWA RPA boundaries are invalid. In a word, those “wetlands” no longer exist at law (and probably not in fact on the property in any case).

Because the WSSI report identifies the relevant “wetland” as a Palustrine-forested wetland “dominated by trees” (the “prevalent” vegetation) and fails to identify the species of

<sup>9</sup> *Sackett et ux. v. Environmental Protection Agency et al.*, 598 US 654, 678 (2023) (*emphasis added*).

trees and whether those tree species were listed on National List of Wetland Plants, the ERC cannot rely on the WSSI report as evidence that the “wetland” meets the definition of a nontidal wetland under Fairfax County Code.

Neither the Board nor the Department of Environmental Quality (DEQ) is ignorant of the *Sackett* decision. DEQ Director Rolband argues that “Neither the State law nor the VWPP regulation is affected by the *Sackett* decision.”<sup>10</sup> In his memorandum, he drops a footnote providing further opinion on the effect on Chesapeake Bay Preservation Area Designation and Management Regulations, arguing: these regulations

“do not use or rely on the jurisdictional language applicable to the CWA. In the Regulations there is a reference to the CWA in the Regulation’s definition for “non-tidal wetlands” as “those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b.” (9 VAC 25-830-40).”

He continues:

The Court’s *Sackett* decision does not affect the definition of Resource Protection Areas (RPAs) and Resource Management Areas (RMAs) as defined in the Chesapeake Bay Preservation Act and associated regulations. The Chesapeake Bay Preservation Act’s implementing regulations provide that some wetlands are components of the RPA and some are components of the RMA. The geographic extents of these wetland components are independent of federal jurisdictional determinations.

If Director Rolband is correct, then the CWA RPA was invalid *ab initio* as it is specifically based on the Federal definition of a wetland subject to the CWA and the WSSI report on which the CWA RPA wetland delineation, both of which failed to address the necessary delineation elements required under Virginia law.

### **Nontidal wetlands under the laws of the Commonwealth**

During its deliberations on Encroachment Exception Request #WAIV-2023-00514, the ERC attempted to discern what constituted a nontidal wetland under Virginia law, and whether the PFO from which the CWA RPA was bounded would also constitute a Virginia nontidal wetland. No consensus arose and County staff was unable to offer a definitive response at that time. Your Petitioner now looks to existent Virginia code and rule in an effort to see whether the Federal law upon which Fairfax County relies, actually provides a definition of a nontidal wetland. In brief, 33 CFR 328.3b does not, but other Federal law may. Hereafter is an analysis of Virginia and Federal law that documents the lack of a ready definition, beginning with Virginia Administrative Code 9VAC25-830-40, which states:

"Nontidal wetlands" means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support,

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<sup>10</sup> Rolband, M., “Memorandum – Recent Supreme Court Decision *Sackett v. Environmental Protection Agency (EPA)* – Effect in Virginia and How to Move Forward Without Economic Dislocation,” June 28, 2023. See, <https://www.deq.virginia.gov/home/showpublisheddocument/18677/638236344334397783>.

and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b.

Additional code also applies. § 9VAC25-830-80 defines nontidal wetlands as follows:

A. At a minimum, Resource Protection Areas shall consist of lands adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of state waters. In their natural condition, these lands provide for the removal, reduction or assimilation of sediments, nutrients and potentially harmful or toxic substances in runoff entering the bay and its tributaries, and minimize the adverse effects of human activities on state waters and aquatic resources.

B. The Resource Protection Area shall include:

...

2. Nontidal wetlands **connected by surface flow** and contiguous to tidal wetlands or water bodies with perennial flow;

*(emphasis added)*. This limitation on an RPA as only containing nontidal wetlands that are connected by surface flow does not, however, limit the definition of an RPA or the kind of nontidal wetlands that can help form an RPA. Returning to § 9VAC25-830-80(B), this code also allows RPAs to include: “(4) Such other lands considered by the local government to meet the provisions of subsection A of this section and to be necessary to protect the quality of state waters.”

Applying subsection § 9VAC25-830-80 (A) & (B)(4), a local government has wide latitude to define as nontidal wetlands any lands “adjacent to water bodies with perennial flow that have an intrinsic water quality value due to the ecological and biological processes they perform or are sensitive to impacts which may cause significant degradation to the quality of state waters.”<sup>11</sup> Fairfax County does so through its Chesapeake Bay Protection Ordinance and thus includes nontidal wetlands that are only “saturated” by ground water, regardless as to whether there is a surface flow connection:

Fairfax County Code § 118-1-6. - Definitions.

(q) *Nontidal wetlands* means those wetlands other than tidal wetlands that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to Sec. 404 of the Federal Clean Water Act, in 33 CFR 328.3b, dated November 13, 1986, or as subsequently amended.

Notably, this conditions a nontidal wetland determination on the presence “under normal circumstances” of “prevalent vegetation” where that vegetation is as defined by EPA in its most current rules, terms EPA does not in fact define.

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<sup>11</sup> 9VAC25-830-80 (A)

33 CFR 328.3b (1986) was superseded by §33 CFR 328.3(c) but there was no change in the language.

**Wetlands** means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 88 FR 61968 (Sept. 8, 2023) (*emphasis in the original*).

Note with care, although wetlands are typically defined based on the presence of hydric soils, hydrophytic vegetation and wetland hydrology,<sup>12</sup> the U.S. EPA definition concentrates exclusively on vegetation as do the Virginia and Fairfax County codes.

Nothing in § 328.3 offers further information on what vegetation is typically adapted for life in saturated soil conditions. Nor does the Clean Water Act provide such information. Nor does the CWA define what constitutes “normal circumstances” or what constitutes a prevalent vegetation. Thus, based exclusively on Virginia and U.S. EPA codes, a citizen has no means to know what constitutes a nontidal wetland in Virginia at large and Fairfax County in particular.

At this point your Petitioner and the Board must swim in other waters. In the absence of a utilitarian definition of a wetland in 33 CFR 328.3(c), a competent attorney or court may seek a definition from other salient sources, and in particular in other Federal rules defining a nontidal wetland. In such circumstances statutory interpretive canon would apply.<sup>13</sup> Thus, your Petitioner has looked to authoritative sources and other Federal rules that explain what constitutes “normal circumstances,” what constitutes a prevalent vegetation and what vegetation typically adapted for life in saturated soil conditions.

Your Petitioner has not risen to a level of hubris to think he is better informed and more knowledgeable than the Board, the DEQ and the many highly competent firms like WSSI who deal with the arcana of wetlands on a daily basis. Yet he has just enough hubris to present a brief summary of the relevant Federal statutes and rules to which Virginia and Fairfax County could look.

Under Fairfax County code, a nontidal wetland is defined by three things, (i) the “normal circumstances” on a wetland; (ii) the “prevalent[t] vegetation”; and, (iii) what vegetation are typically adapted for life in saturated soil conditions. Notably, Fairfax County code is silent on the need for the presence of hydric soils or the wetland hydrology of the nontidal wetland, focusing exclusively on the vegetation.

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<sup>12</sup> See, e.g., Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region (Nov. 2010), available at: <https://usace.contentdm.oclc.org/utis/getfile/collection/p266001coll1/id/7594>.

<sup>13</sup> *Grayned v. City of Rockford*, 408 U.S. 104, 108-09 (1972). (“Man is free to steer between lawful and unlawful conduct” and as such laws must “give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning.”); *United Say. Assn. of Tex. v Timbers of Inwood Forest Associates, Ltd.*, 484 US 365, 371 (1988), cited to in *U.S. v. Cleveland Indians Baseball Co.*, 532 U.S. 200, 220 (2001) (In general, statutes must be interpreted so as to be entirely harmonious with all laws as a whole.); and see, *Red Lion Broadcasting Co., Inc. v. FCC*, 395 U.S. 367, 381-82 (1969) (In addition to the interpretive canon of “harmony with all laws as a whole,” additional interpretive weight is given by the canon that “[s]ubsequent legislation declaring the intent of an earlier statute is entitled to great weight in statutory construction.”).

Your Petitioner has searched all Federal rules seeking definitions for the key elements used to describe “vegetation typically adapted for life in saturated soil conditions,” with precious little success. Of the twelve rules using this term, only two discuss the meaning of the term itself. These are the rules implementing the Marine Protection, Research, and Sanctuaries Act of 1972, (“MPRSA”) as amended and more specifically Subchapter H of that Act which addresses ocean dumping (codified at § 40 CFR 230.41), and the Natural Resources Conservation Service’s (“NRCS”) rules implementing the Agricultural Conservation Easement Program entitled Highly Erodible Land Conservation and Wetland Conservation (codified at 7 CFR 12.31). The MPRSA goes no further than defining this vegetation as “obligate wetland plants.” The NRCS rules go much further.

Applying statutory interpretive canon, your Petitioner suggests that despite the U.S. EPA failure to define the term “nontidal wetlands” through its CWA rules codified at 33 CFR 328.3b, because the NRCS’s rules use identical language to that used by EPA, Virginia and Fairfax County, 7 CFR 12.31 provides a legally defensible definition of “Nontidal wetlands,” as used in Fairfax County Code § 118-1-6(q). Because the Fairfax County code only defines a nontidal wetland in the context of vegetation, how then does 7 CFR 12.31 assist?

Notably, 7 CFR 12.31 points directly to technical guidances and maps<sup>14</sup> to conduct wetland field surveys, focusing on hydric soils, wetland hydrology and hydrophytic vegetation, only the latter of utility to Fairfax County. Under 7 CFR 12.31(b)(3), the NRCS determines the “prevalence of hydrophytic vegetation . . . in accordance with the current Federal wetland delineation methodology in use by NRCS at the time of the determination.” To that end, as of January 2022, the NRCS uses the 1987 Corps of Engineers Wetlands Delineation Manual, as supplemented (in eastern Virginia) by the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain (“AGCP”) Region.<sup>15</sup> This is, of course, the same methodology used to define a CWS § 404 wetland.

The AGCP Manual provides three “indicator” methods by which to determine whether hydrophytic vegetation is prevalent, and thus the ground in which they grow under “normal conditions” constitutes a wetland under Fairfax County Code. The manual also discusses what constitutes normal conditions in a wetland and makes reference to the National Wetland Plant List by which to identify the vegetation typically adapted for life in saturated soil conditions.

Thus, by application of statutory interpretive canon, one can argue that the AGCP Manual provides the definition of a nontidal wetland under § 33 CFR 328.3. The question remains, does the Board accept this interpretive logic?

### **Need for the Policy Enumeration**

The Fairfax County Chesapeake Bay Exception Review Committee cannot prevent its own arbitrary and capricious behavior in the absence of a firm understanding as to whether:

---

<sup>14</sup> For example, the NRCS point to the national and state-by-state list of hydric soils which is available at: <https://www.nrcs.usda.gov/publications/query-by-state.html>; and, the National Wetland Plant List which is available at: [https://cwbi-app.sec.usace.army.mil/nwpl\\_static/v34/home/home.html#](https://cwbi-app.sec.usace.army.mil/nwpl_static/v34/home/home.html#).

<sup>15</sup> Available at <https://usace.contentdm.oclc.org/utills/getfile/collection/p266001coll1/id/7594>.

- (1) the ERC can rely on an RPA buffer based on a now defunct 2003 Clean Water Act (CWA) Section 404 jurisdictional determination of a wetland that fails to address elements required to be met under Fairfax County Ordinance § 118-6-1; and,
- (2) whether, in a new RPA determination, the Applicant may rely on the AGCP Manual methodologies<sup>16</sup> for determining the presence or absence of a prevalence of vegetation typically adapted for life in saturated soil conditions under normal circumstances, as defined by the U.S. Environmental Protection Agency pursuant to Sec. 404 of the Federal Clean Water Act, in 33 CFR 328.3b, dated November 13, 1986, or as subsequently amended.

## **Petition**

Your Petitioner respectfully petitions the Board to establish by policy or rule a position on:

- (1) whether an Exception Review Committee established under the Chesapeake Bay Preservation Act must only recognize a Resource Protection Area buffer measured from a nontidal wetland in which the geographic extents of the nontidal wetland was determined independent of federal jurisdictional determinations made under the Federal Clean Water Act, or studies intended to support such jurisdictional determinations, and addresses all elements identified in 9VAC25-830-40 and relevant local ordinances; and,
- (2) whether an applicant for an exception under Fairfax County Ordinance § 118-6-1 can rely on the AGCP Manual methodologies in order to determine the existence of a nontidal wetland as defined under 33 CFR 328.3 Fairfax County Ordinance § 118-1-6(q), to wit, the presence or absence of a prevalence of vegetation typically adapted for life in saturated soil conditions under normal circumstances.
- (3) Finally, unable to further contain his hubris, your Petitioner respectfully requests the Board to amend Virginia Administrative Code 9VAC25-830-40, to read:

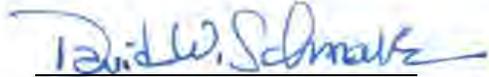
*"Nontidal wetlands" means those ~~wetlands~~ lands other than tidal wetlands whose hydrophytic vegetation indicators, hydric soil indicators and wetland hydrology indicators reveal the subject land is a wetland as described in the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (ERDC/EL TR-12-9) or the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Atlantic and Gulf Coastal Plain Region*

---

<sup>16</sup> See, <https://usace.contentdm.oclc.org/utis/getfile/collection/p266001coll1/id/7594> which covers the eastern side of Virginia. The western side of Virginia is addressed by the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Eastern Mountains and Piedmont Region (ERDC/EL TR-12-9) available at <https://usace.contentdm.oclc.org/utis/getfile/collection/p266001coll1/id/7607>.

~~(ERDC/EL TR-10-20) or later versions thereof. that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, as defined by the U.S. Environmental Protection Agency pursuant to § 404 of the federal Clean Water Act in 33 CFR 328.3b.~~

Respectfully submitted by:

A handwritten signature in blue ink that reads "David W. Schnare". The signature is written in a cursive style and is underlined with a thin blue line.

David W. Schnare, Esq. Ph.D.  
Springfield Member of the  
Fairfax County Chesapeake Bay Preservation Act  
Exception Review Committee  
9033 Brook Ford Rd.  
Burke, Virginia 22015  
571-243-7975  
[dwschnare@gmail.com](mailto:dwschnare@gmail.com)

**Attachment 2**  
**Summary of Public Comments**

## Summary of Comments Received During Petition Comment Period (April 9 through April 29<sup>th</sup> 2024)

Total number of comments supporting = 0  
Organizations supporting: 0

Total number of comments opposing = 32  
Organizations opposing: 16

Commenter	Comment Summary - Opposing
19 Individuals	<ol style="list-style-type: none"> <li>1. <i>Sackett</i> does not apply to the Bay Act Regulations and did not affect or change state definition of nontidal wetland.</li> <li>2. Requested definition would undermine protection for wetlands which are important for absorbing water, maintain ecosystems, and providing critical habitat.</li> </ol>
Potomac Conservancy	<ol style="list-style-type: none"> <li>1. The petition seeks to limit local government discretion</li> <li>2. <i>Sackett</i> only addressed federal jurisdiction</li> <li>3. <i>Sackett</i> does not limit locality ability to protect lands under CBPA</li> <li>4. Board should not insert itself into locality pending decision</li> </ol>
Sierra Club	<ol style="list-style-type: none"> <li>1. <i>Sackett</i> only addressed federal jurisdiction</li> <li>2. <i>Sackett</i> does not limit locality ability to protect sensitive lands</li> <li>3. Bay Act program operating as intended</li> <li>4. Commonwealth should continue to prioritize natural resources</li> </ol>
The Chesapeake Bay Foundation and the Southern Environmental Law Center	<ol style="list-style-type: none"> <li>1. <i>Sackett</i> did not affect state law definition of wetlands</li> <li>2. <i>Sackett</i> did not change locality's ability to protect land under the Bay Act</li> <li>3. DEQ regulations and guidance regarding delineations are sufficiently clear</li> <li>4. Locality exercised its discretionary Bay Act authority in the pending matter</li> <li>5. Board should not intervene during pending locality decision</li> <li>6. <i>Sackett</i> does not change technical considerations for RPA delineation</li> <li>7. Bay Act program is set up and operating as intended to address any locality Bay Act issues</li> </ol>
Nature Forward	<ol style="list-style-type: none"> <li>1. <i>Sackett</i> weakened wetlands protection and Virginia should not follow</li> <li>2. Localities can define wetland types that are RPA and can refer to DEQ Guidance</li> <li>3. Commonwealth should continue to protect wetlands even if not protected federally</li> </ol>
Virginia Conservation Network	<ol style="list-style-type: none"> <li>1. <i>Sackett</i> only addressed federal jurisdiction</li> <li>2. DEQ provides resources and guidance to assist localities and Bay Act operating as intended</li> <li>3. Board should not intervene during pending locality decision</li> </ol>

Wild Virginia	<ol style="list-style-type: none"> <li>1. <i>Sackett</i> only addressed federal jurisdiction</li> <li>2. <i>Sackett</i> does not limit locality ability to protect sensitive lands</li> <li>3. Bay Act program operating as intended</li> </ol>
Virginia Transportation Construction Alliance	<ol style="list-style-type: none"> <li>1. Current definition sufficient</li> <li>2. Definition changes would create confusion</li> </ol>
Waterkeepers Chesapeake, Potomac Riverkeeper Network, and the Assateague Coastkeeper at Assateague Coastal Trust	<ol style="list-style-type: none"> <li>1. <i>Sackett</i> only addressed federal jurisdiction</li> <li>2. <i>Sackett</i> does not limit locality ability to protect lands</li> <li>3. Bay Act allows localities to identify other wetlands with surface water connection to be included in RPA</li> <li>4. <i>Sackett</i> did not change technical considerations and use of '87 Manual in making wetlands determination</li> <li>5. Proposed language from Regional Supplement undermines intent of Regional Supplements</li> <li>6. Board should not intervene during pending locality decision; Bay Act program is set up and operating as intended to address any locality decision issues.</li> </ol>
Friends of Indian River	<ol style="list-style-type: none"> <li>1. Existing definition clear and guidance sufficient</li> <li>2. <i>Sackett</i> only addressed federal jurisdiction</li> <li>3. Bay Act is important for protecting sensitive lands</li> </ol>
Friends of Accotink Creek	<ol style="list-style-type: none"> <li>1. <i>Sackett</i> weakened wetlands protection and Virginia should not follow</li> <li>2. Do not weaken existing provisions which are not strong enough as is</li> </ol>
Friends of Holmes Run	<ol style="list-style-type: none"> <li>1. Existing Bay Act program important</li> <li>2. <i>Sackett</i> did not change definition of nontidal wetland</li> <li>3. Request would undermine RPA biological function and locality authority</li> </ol>
Environmental Defense Fund	<ol style="list-style-type: none"> <li>1. <i>Sackett</i> does not impact state law definition of wetlands</li> <li>2. <i>Sackett</i> does not change locality's ability to protect land under the CBPA</li> <li>3. <i>Sackett</i> does not change technical considerations for RPA delineation</li> <li>4. Board should not intervene during pending locality decision</li> <li>5. Bay Act program is set up and operating as intended to address any locality decision issues</li> </ol>
Wetlands Watch	<ol style="list-style-type: none"> <li>1. <i>Sackett</i> does not apply to state law</li> <li>2. Nontidal wetlands already properly defined</li> <li>3. Board should not intervene during pending locality decision</li> <li>4. Undermines local government authority to protect sensitive areas</li> </ol>

**Attachment 3**  
**Site-Specific RPA Delineation Cover Sheet and Fairfax County RPA Map**

DATE	BY	REVISIONS
10/1/88	...	...
...	...	...

**APPROVED:** [Signature]

**DATE:** 10/1/88

**BY:** [Name]

**TITLE:** [Title]

**PROPERTY OWNER:** [Name]

**ADDRESS:** [Address]

**CITY:** [City]

**STATE:** [State]

**ZIP:** [ZIP]

**PROJECT DESCRIPTION:** [Text]

**PREPARED BY:** [Name]

**DATE:** [Date]

**PROPERTY OWNER:** [Name]

**ADDRESS:** [Address]

**CITY:** [City]

**STATE:** [State]

**ZIP:** [ZIP]

**PROJECT DESCRIPTION:** [Text]

**PREPARED BY:** [Name]

**DATE:** [Date]

**PROPERTY OWNER:** [Name]

**ADDRESS:** [Address]

**CITY:** [City]

**STATE:** [State]

**ZIP:** [ZIP]

**PROJECT DESCRIPTION:** [Text]

**PREPARED BY:** [Name]

**DATE:** [Date]

**PROPERTY OWNER:** [Name]

**ADDRESS:** [Address]

**CITY:** [City]

**STATE:** [State]

**ZIP:** [ZIP]

**PROJECT DESCRIPTION:** [Text]

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**CITY:** [City]

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**PROJECT DESCRIPTION:** [Text]

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**CITY:** [City]

**STATE:** [State]

**ZIP:** [ZIP]

**PROJECT DESCRIPTION:** [Text]

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**DATE:** [Date]

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**CITY:** [City]

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**DATE:** [Date]

**PROPERTY OWNER:** [Name]

**ADDRESS:** [Address]

**CITY:** [City]

**STATE:** [State]

**ZIP:** [ZIP]

**PROJECT DESCRIPTION:** [Text]

**PREPARED BY:** [Name]

**DATE:** [Date]

**THOMPSON ROAD ASSEMBLAGE PRESERVATION AREA PLAN**

**9820 19A-01-1**

**PROPERTY OWNER:** [Name]

**ADDRESS:** [Address]

**CITY:** [City]

**STATE:** [State]

**ZIP:** [ZIP]

**PROJECT DESCRIPTION:** [Text]

**PREPARED BY:** [Name]

**DATE:** [Date]

**PROPERTY OWNER:** [Name]

**ADDRESS:** [Address]

**CITY:** [City]

**STATE:** [State]

**ZIP:** [ZIP]

**PROJECT DESCRIPTION:** [Text]

**PREPARED BY:** [Name]

**DATE:** [Date]

**PROPERTY OWNER:** [Name]

**ADDRESS:** [Address]

**CITY:** [City]

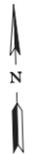
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**ZIP:** [ZIP]

**PROJECT DESCRIPTION:** [Text]

**PREPARED BY:** [Name]

**DATE:** [Date]



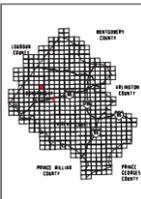
Map file is 50' X 75' based on USGS 1:24,000 scale  
 7 1/2 minute Quad, Virginia Coordinate System  
 values are of 1983 North Zone in U.S. feet based on  
 NAD 83/93 High Precision GPS Network adjustment.  
 National Geodetic Vertical Datum 1929

**GENERAL NOTES**

**CHESAPEAKE BAY PRESERVATION AREAS**

- LEGEND**
- Resource Protection Areas (RPAs)
    - 1993 RPAs
    - 2003 RPAs
    - 2003 (Rev) RPAs
  - Resource Management Areas (RMAs)
- 07/12/2005

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**ADMINISTRATIVE INDEX**

34-2	35-1	35-2
34-4	35-3	35-4
44-2	45-1	45-2

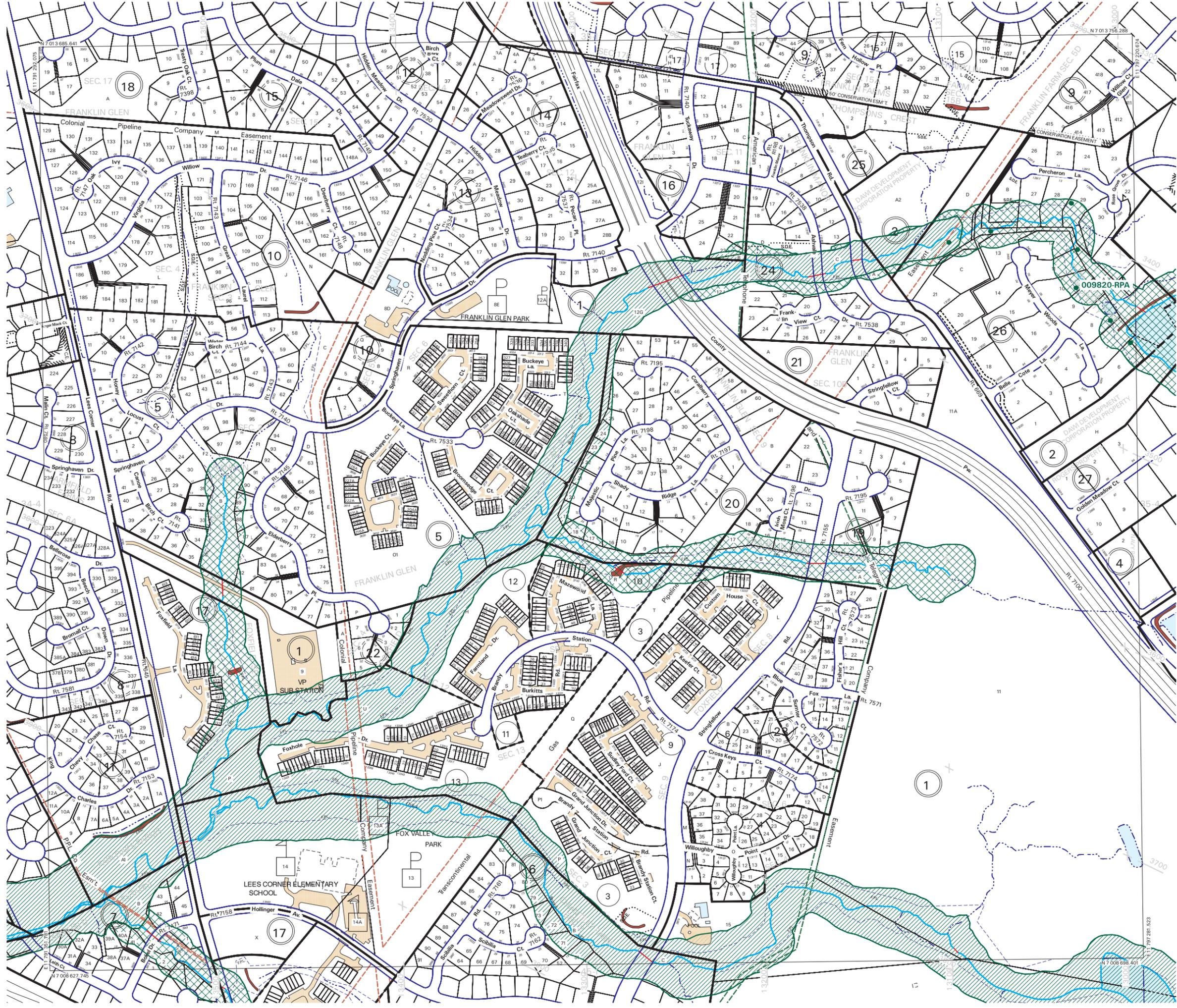
**SHEET INDEX**

**PROPERTY MAP**

**35-3**

Revised to: 08/01/05

Prepared by:  
 DEPARTMENT OF INFORMATION TECHNOLOGY  
 Enterprise Services Division  
 Geographic Information Services  
 12000 Government Center Parkway, Suite 117  
 Fairfax, Virginia 22035-0010  
 (703) 334-2712  
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TAB M



*Commonwealth of Virginia*

*VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY*

www.deq.virginia.gov

Travis A. Voyles  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

MEMORANDUM

TO: State Water Control Board Members

FROM: Rebeccah Rochet, Deputy Director, Division of Water Permitting *Rebeccah Rochet*

DATE: June 5, 2024

SUBJECT: 9VAC25-875 – Amend and update the Virginia Erosion and Stormwater Management Regulation to correct technical errors

---

The intent of this fast-track regulatory action is to correct technical errors that have been identified in the Virginia Erosion and Stormwater Management (VESM) Regulation<sup>i</sup> since its publication in the *Virginia Register of Regulations* on December 4, 2023.<sup>ii</sup> The technical corrections will improve clarity and certainty by making the VESM Regulation internally consistent, removing outdated requirements, and accurately reflecting requirements in the State Water Control Law.<sup>iii</sup>

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the regulated community and other stakeholders who have been involved in the process to adopt the VESM Regulation and develop the new Virginia Stormwater Management Handbook<sup>iv</sup> have requested changes that clarify requirements for localities that implement erosion and stormwater management programs or erosion and sediment control programs and correct other technical errors that have been identified since publication of the final regulation in December 2023.

Amendments to the VESM Regulation and the Agency Background Document (Form TH-04) are attached. Detailed changes to the VESM Regulation are listed in the TH-04. Examples of several technical changes are described below:

- Correcting cross-references to Chesapeake Bay Preservation Area requirements (e.g., 9VAC25-875-70, 9VAC25-875-250, and 9VAC25-875-470).
- Moving subsection G of 9VAC25-875-300 to 9VAC25-875-550 E so that the requirement for owners to maintain, inspect, and repair erosion and sediment control structures is in the part of the regulation that has other owner requirements, not the part of the regulation that is specific to localities.

- Updating the Department’s provisions for reviewing and evaluating a locality’s erosion and sediment control program (9VAC25-875-370 D) so that they are consistent with the requirements in the State Water Control Law.
- Removing requirements related to grandfathering that are no longer applicable (9VAC25-875-490).
- Clarifying that an erosion and sediment control plan, which is included in a stormwater pollution prevention plan for land-disturbing activity, must be consistent with the erosion and sediment control criteria, techniques, and methods (minimum standards, 9VAC25-875-560).

The Office of the Attorney General will be sent the final regulation for certification of statutory authority.

Attachments: Text of Regulatory Amendments, Agency Background Document (TH-04), ORM Economic Review Form

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<sup>i</sup> 9VAC25-875, effective July 1, 2024.

<sup>ii</sup> 40:8 VA.R. 461-557 December 4, 2023 (<https://register.dls.virginia.gov/toc.aspx?voliss=40:08>).

<sup>iii</sup> Chapter 3.1 of Title 62.1 of the Code of Virginia, (§ 62.1-44.2 et seq.).

<sup>iv</sup> GM24-2001, available here: <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=7706>

1 Fast-Track Regulatory Action - 9VAC25-875 – Amend and update the Virginia Erosion and  
2 Stormwater Management Regulation to correct technical errors- for June 25, 2024 State Water  
3 Control Board meeting (RIS Project 7961)

4  
5 **9VAC25-875-70. Regulated land-disturbing activities.**

6 A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as  
7 follows:

8 1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality  
9 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one  
10 acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and  
11 not part of a common plan of development or sale, is subject to criteria defined in Article  
12 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.

13 2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality  
14 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one  
15 acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is  
16 subject to criteria defined in Article 2 and Article ~~35~~ (9VAC25-875-~~570740~~ et seq.) of Part  
17 V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable, as  
18 determined in accordance with 9VAC25-875-480 and 9VAC25-875-490. For land-  
19 disturbing activities for single-family detached residential structures, Article 2 of Part V and  
20 water quantity technical criteria, 9VAC25-875-600, shall apply to any land-disturbing  
21 activity that disturbs 2,500 square feet or more of land, and the locality also may require  
22 compliance with the water quality technical criteria, 9VAC25-875-580 and 9VAC25-875-  
23 590.

24 3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common  
25 plan of development or sale that disturbs one acre or more, is subject to criteria defined in  
26 Article 2 and Article 3 of Part V unless Article 4 of Part V of this chapter is applicable, as  
27 determined in accordance with 9VAC25-875-480 and 9VAC25-875-490.

28 4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in  
29 Article 2 and Article 3 of Part V unless Article 4 of Part V is applicable, as determined in  
30 accordance with 9VAC25-875-480 and 9VAC25-875-490.

31 B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of  
32 the Code of Virginia, adopt more stringent local requirements.

33  
34 Part III

35 Virginia Erosion and Sediment Control Program

36  
37 Article 2

38 Land-Disturbing Activities

39  
40 **9VAC25-875-250. Regulated land-disturbing activities.**

41 A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as  
42 follows:

43 1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality  
44 may reduce this regulatory threshold to a smaller area of disturbed land, ~~is less than one~~  
45 ~~acre, and~~ not in an area of a locality designated as a Chesapeake Bay Preservation Area

46 is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-  
47 470 et seq.) of this chapter.

48 2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality  
49 may reduce this regulatory threshold to a smaller area of disturbed land, ~~is less than one~~  
50 ~~acre,~~ and in an area of a locality designated as a Chesapeake Bay Preservation Area is  
51 subject to criteria defined in Article 2 and Article 5 (9VAC25-875-740 et seq.) of Part V of  
52 this chapter.

53 B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:65 of the Code of  
54 Virginia, adopt more stringent local requirements.

55

56 **9VAC25-875-280. Activities not required to comply with the ESCL.**

57 Notwithstanding any other provisions of the Erosion and Sediment Control Law for Localities  
58 Not Administering a Virginia Erosion and Stormwater Management Program (ESCL), the following  
59 activities are not required to comply with the ESCL unless otherwise required by federal law:

60 1. Disturbance of a land area of less than 10,000 square feet in size or less than 2,500  
61 square feet in an area designated as a Chesapeake Bay Preservation Area pursuant to  
62 the Chesapeake Bay Preservation Act (§ 62.1-44.15:67 et seq. of the Code of Virginia).  
63 However, the governing body of the program authority may reduce this exception to a  
64 smaller area of disturbed land or qualify the conditions under which this exception shall  
65 apply;

66 2. Minor land-disturbing activities such as home gardens and individual home landscaping,  
67 repairs, and maintenance work;

68 3. Installation, maintenance, or repair of any individual service connection;

69 4. Installation, maintenance, or repair of any underground utility line when such activity  
70 occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing  
71 activity is confined to the area of the road, street, or sidewalk that is hard surfaced;

72 5. Installation, maintenance, or repair of any septic tank line or drainage field unless  
73 included in an overall plan for land-disturbing activity relating to construction of the building  
74 to be served by the septic tank system;

75 6. Permitted surface or deep mining operations and projects or oil and gas operations and  
76 projects conducted pursuant to Title 45.2 of the Code of Virginia;

77 7. Clearing of lands specifically for bona fide agricultural purposes; the management,  
78 tilling, planting, or harvesting of agricultural, horticultural, or forest crops; livestock feedlot  
79 operations; agricultural engineering operations, including construction of terraces, terrace  
80 outlets, check dams, desilting basins, dikes, ponds, ditches, strip cropping, lister furrowing,  
81 contour cultivating, contour furrowing, land drainage, and land irrigation; or as additionally  
82 set forth by the board in regulations. However, this exception shall not apply to harvesting  
83 of forest crops unless the area on which harvesting occurs is reforested artificially or  
84 naturally in accordance with the provisions of Chapter 11 (§ 10.1-1100 et seq.) of Title  
85 10.1 of the Code of Virginia or is converted to bona fide agricultural or improved pasture  
86 use as described in subsection B of § 10.1-1163 of the Code of Virginia;

87 8. Installation of fence and sign posts or telephone and electric poles and other kinds of  
88 posts or poles;

89 9. Shoreline erosion control projects on tidal waters when all of the land-disturbing  
90 activities are within the regulatory authority of and approved by local wetlands boards, the  
91 Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however,

any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and ~~the regulations adopted pursuant thereto~~this chapter;

10. Land-disturbing activities in response to a public emergency where the related work requires immediate authorization to avoid imminent endangerment to human health or the environment. In such situations, the VESCP authority shall be advised of the disturbance within seven days of commencing the land-disturbing activity, and compliance with the administrative requirements of Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter is required within 30 days of commencing the land-disturbing activity;

11. Discharges to a sanitary sewer or a combined sewer system that are not from a land-disturbing activity; and

12. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company.

### Article 3

#### Programs Operated by a VESCP Authority

##### **9VAC25-875-300. Plan review requirements.**

A. The VESCP authority shall review erosion and sediment control plans prepared in accordance with 9VAC25-875-550 that detail the criteria, techniques, and methods as defined in ~~9VAC25-875-550-560~~for land-disturbing activities described in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-280.

B. When determined that the plan meets the minimum criteria, techniques, and methods as defined in ~~9VAC25-875-550~~560, the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.

C. When the VESCP authority determines a plan is inadequate, written notice stating the specific reasons for disapproval shall be communicated to the applicant within 45 days. The notice shall specify the modifications, terms, and conditions that are necessary for approval of the plan. If no action is taken by the VESCP authority within 45 days, the plan shall be deemed approved and the proposed activity authorized. The VESCP authority shall act on any erosion and sediment control plan that has been previously deemed inadequate within 45 days after receipt of a revised plan if deemed adequate.

D. For sites requiring coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, the VESCP authority shall obtain evidence of such coverage prior to approving the erosion and sediment control plan.

E. The person responsible for carrying out the plan shall provide the name of an individual holding a certificate to the VESCP authority who will be in charge of and responsible for carrying out the land-disturbing activity. However, the VESCP authority may waive the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in accordance with § 62.1-44.15:55 of the Code of Virginia.

F. The VESCP authority may require approval of an erosion and sediment control plan for any land identified as an erosion impact area in accordance with § 62.1-44.15.55 of the Code of Virginia.

~~G. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.~~

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Article 4

Review Procedures for VESCPs

**9VAC25-875-370. Review and evaluation of VESCPs.**

A. This section sets forth the criteria that will be used by the department to determine whether a locality operating a VESCP under authority of the ESCL, a "VESCP authority," satisfies minimum standards of effectiveness, as follows.

Each VESCP must contain an ordinance or other appropriate document adopted by the VESCP authority. Such document must be consistent with the ESCL and Part III (9VAC25-875-210 et seq.) of this chapter, including the following criteria:

1. The document shall include or reference the definition of land-disturbing activity, including exemptions as well as any other significant terms, as necessary to produce an effective VESCP;
2. The document shall identify the VESCP authority and any soil and water conservation district, adjacent locality, or other public or private entities that the VESCP authority entered into agreements or contracts with to assist with carrying out the provisions of the ESCL and Part III of this chapter and must include the requirements and design standards to be used in the program;
3. The document shall include procedures for submission and approval of plans, issuance of permits, monitoring and inspections of land-disturbing activities. The position, agency, department, or other party responsible for conducting inspections shall be identified. The VESCP authority shall maintain, either onsite or in VESCP files, a copy of the approved plan and a record of inspections for each active land-disturbing activity;
4. Each VESCP operated by a county, city, or town shall include provisions for the integration of the VESCP with flood insurance, flood plain management, and other programs requiring compliance prior to authorizing a land-disturbing activity in order to make the submission and approval of plans, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient both for the local governments and those responsible for compliance with the programs; and
5. The VESCP authority must take appropriate enforcement actions, where authorized to do so, to achieve compliance with the program and maintain a record of enforcement actions for all active land-disturbing activities.

B. The department shall periodically conduct a comprehensive review and evaluation of each VESCP authority pursuant to subdivision (19) of § 62.1-44.15 of the Code of Virginia. The department will coordinate the review with its other program reviews for the same entity to avoid redundancy. The review and evaluation of a VESCP authority shall consist of the following: (i) consultation with the local program administrator or designee; (ii) review of the local ordinance and other applicable documents; (iii) review of plans approved by the VESCP authority; (iv) inspection of regulated activities; and (v) review of enforcement actions where authorized to do so. The department is also authorized to conduct a partial VESCP compliance review.

C. Each VESCP authority shall be reviewed and evaluated by the department for effectiveness in carrying out the ESCL and Part III of this chapter using the criteria in this section.

D. If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP

185 authority ~~has not implemented the necessary compliance actions identified by the department~~  
186 ~~within the corrective action schedule, or such additional period as is granted to complete the~~  
187 ~~implementation of the corrective action, then the department shall have the authority to (i) issue~~  
188 ~~a special order to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the~~  
189 ~~Code of Virginia or (ii) revoke its approval of the VESCP~~ fails to bring its program into compliance  
190 in accordance with the compliance schedule, then the department is authorized to (i) issue a  
191 special order to any locality imposing a civil penalty not to exceed \$ 5,000 per violation with the  
192 maximum amount not to exceed \$ 50,000 per order for noncompliance with the state program, to  
193 be paid into the state treasury and deposited in the Stormwater Local Assistance Fund  
194 established in § 62.1-44.15:29.1 of the Code of Virginia or (ii) with the consent of the locality,  
195 provide in an order issued against the locality for the payment of civil charges for violations in lieu  
196 of civil penalties, in specific sums not to exceed the limit stated in this subdivision. The  
197 Administrative Process Act (§ 2.2-4000 et seq. of the Code of Virginia) and Article 5 (§ 62.1-44.20  
198 et seq.) of Chapter 3.1 of Title 62.1 if the Code of Virginia shall govern the review activities and  
199 proceedings of the department and the judicial review thereof. In lieu of issuing a special order or  
200 revoking the program, the department is authorized to take legal action against a VESCP authority  
201 to ensure compliance.

202 E. Review and evaluation of VESCPs shall be conducted according to a schedule adopted by  
203 the department in accordance with subdivision (19) of § 62.1-44.15 of the Code of Virginia.

204

205

Part V

206

Criteria and Requirements for Regulated Land-Disturbing Activities

207

Article 1

208

Administrative Criteria

209

**9VAC25-875-470. Applicability.**

210

A. Land-disturbing activities that meet one of the criteria in this subsection are regulated as  
211 follows:

212

1. Land-disturbing activity that disturbs 10,000 square feet or more, although a locality  
213 may reduce this regulatory threshold to a smaller area of disturbed land, is less than one  
214 acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area, and  
215 not part of a common plan of development or sale, is subject to criteria defined in Article  
216 2 (9VAC25-875-540 et seq.) of this part of this chapter.

217

2. Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may  
218 reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre,  
219 and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject  
220 to criteria defined in Article 2 and Article ~~35~~ (9VAC25-875-~~570~~740 et seq.) of this part  
221 unless Article 4 (9VAC25-875-670 et seq.) of this part is applicable, as determined in  
222 accordance with 9VAC25-875-480 and 9VAC25-875-490. For land-disturbing activities for  
223 single-family detached residential structures, Article 2 of this part and water quantity  
224 technical criteria, 9VAC25-875-600, shall apply to any land-disturbing activity that disturbs  
225 2,500 square feet or more of land, and the locality also may require compliance with the  
226 water quality technical criteria, 9VAC25-875-580 and 9VAC25-875-590.

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3. Land-disturbing activity that disturbs less than one acre, but is part of a larger common  
228 plan of development or sale that disturbs one acre or more, is subject to criteria defined in  
229 Article 2 and Article 3 of this part unless Article 4 of this part is applicable, as determined  
230 in accordance with 9VAC25-875-480 and 9VAC25-875-490.

231 4. Land-disturbing activity that disturbs one acre or more is subject to criteria defined in  
232 Article 2 and Article 3 of this part unless Article 4 of this part is applicable, as determined  
233 in accordance with 9VAC25-875-480 and 9VAC25-875-490.

234 B. A locality may, by local ordinance adopted pursuant to § 62.1-44.15:33 or 62.1-44.15:65 of  
235 the Code of Virginia, adopt more stringent local requirements.

236

237 **9VAC25-875-490. Grandfathering.**

238 ~~A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and~~  
239 ~~shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part provided:~~

240 ~~1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary~~  
241 ~~or final subdivision plat, preliminary or final site plan, or any document determined by the~~  
242 ~~locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012; (ii)~~  
243 ~~provided a layout as defined in 9VAC25-875-670; (iii) will comply with the technical criteria~~  
244 ~~of Article 4 of this part; and (iv) has not been subsequently modified or amended in a~~  
245 ~~manner resulting in an increase in the amount of phosphorus leaving each point of~~  
246 ~~discharge and such that there is no increase in the volume or rate of runoff;~~

247 ~~2. A permit has not been issued prior to July 1, 2014; and~~

248 ~~3. Land disturbance did not commence prior to July 1, 2014.~~

249 **BA.** Locality, state, and federal projects shall be considered grandfathered by the VESMP  
250 authority and shall be subject to the technical criteria of Article 4 of this part provided:

251 1. There has been an obligation of locality, state, or federal funding, in whole or in part,  
252 prior to July 1, 2012, or the department has approved a stormwater management plan  
253 prior to July 1, 2012;

254 2. A permit has not been issued prior to July 1, 2014; and

255 3. Land disturbance did not commence prior to July 1, 2014.

256 ~~C. Land-disturbing activities grandfathered under subsections A and B of this section shall~~  
257 ~~remain subject to the technical criteria of Article 4 of this part for one additional permit cycle. After~~  
258 ~~such time, portions of the project not under construction shall become subject to any new technical~~  
259 ~~criteria adopted by the board.~~

260 **DB.** In cases where governmental bonding or public debt financing has been issued for a  
261 project prior to July 1, 2012, such project shall be subject to the technical criteria of Article 4 of  
262 this part.

263 **EC.** Nothing in this section shall preclude an operator from constructing to a more stringent  
264 standard at the operator's discretion.

265

266 **9VAC25-875-500. Stormwater pollution prevention plan requirements.**

267 A. A stormwater pollution prevention plan shall include an approved erosion and sediment  
268 control plan, an approved stormwater management plan, a pollution prevention plan for regulated  
269 land-disturbing activities, and a description of any additional control measures necessary to  
270 address a TMDL pursuant to subsection E of this section.

271 B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-  
272 550 and 9VAC25-875-560 must be designed and implemented during construction activities. Prior  
273 to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the  
274 department.

275 C. A stormwater management plan consistent with the requirements of 9VAC25-875-510 must  
276 be designed and implemented during construction activities. Prior to land disturbance, this plan  
277 must be approved by the VESMP authority or the department.

278 D. A pollution prevention plan that identifies potential sources of pollutants that may  
279 reasonably be expected to affect the quality of stormwater discharges from the construction site  
280 and describe control measures that will be used to minimize pollutants in stormwater discharges  
281 from the construction site must be developed before land disturbance commences.

282 E. In addition to the requirements of subsections A through D of this section, if a specific  
283 wasteload allocation for a pollutant has been established in an approved TMDL and is assigned  
284 to stormwater discharges from a construction activity, additional control measures must be  
285 identified and implemented by the operator so that discharges are consistent with the  
286 assumptions and requirements of the wasteload allocation.

287 F. The stormwater pollution prevention plan (SWPPP) must address the following  
288 requirements as specified in 40 CFR 450.21, to the extent otherwise required by state law or  
289 regulations and any applicable requirements of a permit:

- 290 1. Control stormwater volume and velocity within the site to minimize soil erosion;
- 291 2. Control stormwater discharges, including both peak flow rates and total stormwater  
292 volume, to minimize erosion at outlets and to minimize downstream channel and stream  
293 bank erosion;
- 294 3. Minimize the amount of soil exposed during construction activity;
- 295 4. Minimize the disturbance of steep slopes;
- 296 5. Minimize sediment discharges from the site. The design, installation, and maintenance  
297 of erosion and sediment controls must address factors such as the amount, frequency,  
298 intensity, and duration of precipitation, the nature of resulting stormwater runoff, and soil  
299 characteristics, including the range of soil particle sizes expected to be present on the site;
- 300 6. Provide and maintain natural buffers around surface waters, direct stormwater to  
301 vegetated areas to increase sediment removal, and maximize stormwater infiltration,  
302 unless infeasible;
- 303 7. Minimize soil compaction and, unless infeasible, preserve topsoil;
- 304 8. Stabilization of disturbed areas must, at a minimum, be initiated immediately whenever  
305 any clearing, grading, excavating, or other earth disturbing activities have permanently  
306 ceased on any portion of the site, or temporarily ceased on any portion of the site and will  
307 not resume for a period exceeding 14 calendar days. Stabilization must be completed  
308 within a period of time determined by the VESMP authority or the department as the VSMP  
309 authority. In arid, semi-arid, and drought-stricken areas where initiating vegetative  
310 stabilization measures immediately is infeasible, alternative stabilization measures must  
311 be employed as specified by the VESMP authority or department; and
- 312 9. Utilize outlet structures that withdraw water from the surface, unless infeasible, when  
313 discharging from basins and impoundments.

314 G. The SWPPP shall be amended whenever there is a change in design, construction,  
315 operation, or maintenance that has a significant effect on the discharge of pollutants to state  
316 waters and that has not been previously addressed in the SWPPP. The SWPPP must be  
317 maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's  
318 location must be posted near the main entrance at the construction site.

319

320

Article 2

321

Soil Erosion Requirements

322

323 **9VAC25-875-550. Erosion and sediment control plan requirements.**

324 A. An erosion and sediment control plan shall be filed for a development and the buildings  
325 constructed within, regardless of the phasing of construction. The erosion and sediment control  
326 plan shall contain all major conservation decisions to ensure that the entire unit of land will be so  
327 treated to achieve the conservation objectives and minimum standards in 9VAC25-875-560. The  
328 erosion and sediment control plan may include:

- 329 1. Appropriate maps;
- 330 2. An appropriate soil and water plan inventory and management information with needed
- 331 interpretations; and
- 332 3. A record of decisions contributing to conservation treatment.

333 B. The person responsible for carrying out the plan shall provide the name of an individual  
334 holding a certificate who will be in charge of and responsible for carrying out the land-disturbing  
335 activity to the VESCP or VESMP authority. However, the VESCP or VESMP authority may waive  
336 the Responsible Land Disturber Certificate requirement for an agreement in lieu of a plan in  
337 accordance with § 62.1-44.15:34 or 62.1-44.15:55 of the Code of Virginia.

338 C. If individual lots or sections in a residential development are being developed by different  
339 property owners, all land-disturbing activities related to the building construction shall be covered  
340 by an erosion and sediment control plan or an agreement in lieu of a plan signed by the property  
341 owner.

342 D. Land-disturbing activity of less than 10,000 square feet on individual lots in a residential  
343 development shall not be considered exempt from the provisions of the VESMA, ESCL, or this  
344 chapter if the total land-disturbing activity in the development is equal to or greater than 10,000  
345 square feet.

346 E. All erosion and sediment control structures and systems shall be maintained, inspected,  
347 and repaired as needed to ensure continued performance of their intended function. A statement  
348 describing the maintenance responsibilities of the individual responsible for carrying out the land-  
349 disturbing activity shall be included in the approved erosion and sediment control plan.

350

351 **9VAC25-875-560. Erosion and sediment control criteria, techniques, and methods:**  
352 **minimum standards.**

353 A. An erosion and sediment control plan consistent with the following criteria, techniques, and  
354 methods shall be submitted to the VESMP authority or VESCP authority for review and approval:

- 355 1. Permanent or temporary soil stabilization shall be applied to denuded areas within
- 356 seven days after final grade is reached on any portion of the site. Temporary soil
- 357 stabilization shall be applied within seven days to denuded areas that may not be at final
- 358 grade but will remain dormant for longer than 14 days. Permanent stabilization shall be
- 359 applied to areas that are to be left dormant for more than one year.
- 360 2. During construction of the project, soil stockpiles and borrow areas shall be stabilized
- 361 or protected with sediment trapping measures. The applicant is responsible for the
- 362 temporary protection and permanent stabilization of all soil stockpiles on site as well as
- 363 borrow areas and soil intentionally transported from the project site.
- 364 3. A permanent vegetative cover shall be established on denuded areas not otherwise
- 365 permanently stabilized. Permanent vegetation shall not be considered established until a

366 ground cover is achieved that is uniform, is mature enough to survive, and will inhibit  
367 erosion.

368 4. Sediment basins and traps, perimeter dikes, sediment barriers, and other measures  
369 intended to trap sediment shall be constructed as a first step in any land-disturbing activity  
370 and shall be made functional before upslope land disturbance takes place.

371 5. Stabilization measures shall be applied to earthen structures such as dams, dikes, and  
372 diversions immediately after installation.

373 6. Sediment traps and sediment basins shall be designed and constructed based upon  
374 the total drainage area to be served by the trap or basin.

375 a. The minimum storage capacity of a sediment trap shall be 134 cubic yards per acre  
376 of drainage area and the trap shall only control drainage areas less than three acres.

377 b. Surface runoff from disturbed areas that is comprised of flow from drainage areas  
378 greater than or equal to three acres shall be controlled by a sediment basin. The  
379 minimum storage capacity of a sediment basin shall be 134 cubic yards per acre of  
380 drainage area. The outfall system shall, at a minimum, maintain the structural integrity  
381 of the basin during a 25-year storm of 24-hour duration. Runoff coefficients used in  
382 runoff calculations shall correspond to a bare earth condition or those conditions  
383 expected to exist while the sediment basin is utilized.

384 7. Cut and fill slopes shall be designed and constructed in a manner that will minimize  
385 erosion. Slopes that are found to be eroding excessively within one year of permanent  
386 stabilization shall be provided with additional slope stabilizing measures until the problem  
387 is corrected.

388 8. Concentrated runoff shall not flow down cut or fill slopes unless contained within an  
389 adequate temporary or permanent channel, flume, or slope drain structure.

390 9. Whenever water seeps from a slope face, adequate drainage or other protection shall  
391 be provided.

392 10. All storm sewer inlets that are made operable during construction shall be protected  
393 so that sediment-laden water cannot enter the conveyance system without first being  
394 filtered or otherwise treated to remove sediment.

395 11. Before newly constructed stormwater conveyance channels or pipes are made  
396 operational, adequate outlet protection and any required temporary or permanent channel  
397 lining shall be installed in both the conveyance channel and receiving channel.

398 12. When work in a live watercourse is performed, precautions shall be taken to minimize  
399 encroachment, control sediment transport, and stabilize the work area to the greatest  
400 extent possible during construction. Nonerodible material shall be used for the  
401 construction of causeways and cofferdams. Earthen fill may be used for these structures  
402 if armored by nonerodible cover materials.

403 13. When a live watercourse must be crossed by construction vehicles more than twice in  
404 any six-month period, a temporary vehicular stream crossing constructed of nonerodible  
405 material shall be provided.

406 14. All applicable federal, state, and local requirements pertaining to working in or crossing  
407 live watercourses shall be met.

408 15. The bed and banks of a watercourse shall be stabilized immediately after work in the  
409 watercourse is completed.

410 16. Underground utility lines shall be installed in accordance with the following standards  
411 in addition to other applicable criteria:

412 a. No more than 500 linear feet of trench may be opened at one time.

- 413 b. Excavated material shall be placed on the uphill side of trenches.  
414 c. Effluent from dewatering operations shall be filtered or passed through an approved  
415 sediment trapping device, or both and discharged in a manner that does not adversely  
416 affect flowing streams or off-site property.  
417 d. Material used for backfilling trenches shall be properly compacted in order to  
418 minimize erosion and promote stabilization.  
419 e. Restabilization shall be accomplished in accordance with this chapter.  
420 f. Applicable safety requirements shall be complied with.
- 421 17. Where construction vehicle access routes intersect paved or public roads, provisions  
422 shall be made to minimize the transport of sediment by vehicular tracking onto the paved  
423 surface. Where sediment is transported onto a paved or public road surface, the road  
424 surface shall be cleaned thoroughly at the end of each day. Sediment shall be removed  
425 from the roads by shoveling or sweeping and transported to a sediment control disposal  
426 area. Street washing shall be allowed only after sediment is removed in this manner. This  
427 provision shall apply to individual development lots as well as to larger land-disturbing  
428 activities.
- 429 18. All temporary erosion and sediment control measures shall be removed within 30 days  
430 after final site stabilization or after the temporary measures are no longer needed, unless  
431 otherwise authorized by the VESCP or VESMP authority. Trapped sediment and the  
432 disturbed soil areas resulting from the disposition of temporary measures shall be  
433 permanently stabilized to prevent further erosion and sedimentation.
- 434 19. Properties and waterways downstream from development sites shall be protected from  
435 sediment deposition, erosion, and damage due to increases in volume, velocity, and peak  
436 flow rate of stormwater runoff for the stated frequency storm of 24-hour duration in  
437 accordance with the following standards and criteria. Stream restoration and relocation  
438 projects that incorporate natural channel design concepts are not manmade channels and  
439 shall be exempt from any flow rate capacity and velocity requirements for natural or  
440 manmade channels:
- 441 a. Concentrated stormwater runoff leaving a development site shall be discharged  
442 directly into an adequate natural or manmade receiving channel, pipe, or storm sewer  
443 system. For those sites where runoff is discharged into a pipe or pipe system,  
444 downstream stability analyses at the outfall of the pipe or pipe system shall be  
445 performed.
- 446 b. Adequacy of all channels and pipes shall be verified in the following manner:
- 447 (1) The applicant shall demonstrate that the total drainage area to the point of analysis  
448 within the channel is 100 times greater than the contributing drainage area of the  
449 project in question; or
- 450 (2) (a) Natural channels shall be analyzed by the use of a two-year storm to verify that  
451 stormwater will not overtop channel banks nor cause erosion of channel bed or banks.
- 452 (b) All previously constructed manmade channels shall be analyzed by the use of a  
453 10-year storm to verify that stormwater will not overtop the stormwater's banks and by  
454 the use of a two-year storm to demonstrate that stormwater will not cause erosion of  
455 channel bed or banks; and
- 456 (c) Pipes and storm sewer systems shall be analyzed by the use of a 10-year storm to  
457 verify that stormwater will be contained within the pipe or system.
- 458 c. If existing natural receiving channels or previously constructed manmade channels  
459 or pipes are not adequate, the applicant shall:

460 (1) Improve the channels to a condition where a 10-year storm will not overtop the  
461 banks and a two-year storm will not cause erosion to the channel, the bed, or the  
462 banks;

463 (2) Improve the pipe or pipe system to a condition where the 10-year storm is  
464 contained within the appurtenances;

465 (3) Develop a site design that will not cause the predevelopment peak runoff rate from  
466 a two-year storm to increase when runoff outfalls into a natural channel or will not  
467 cause the predevelopment peak runoff rate from a 10-year storm to increase when  
468 runoff outfalls into a manmade channel; or

469 (4) Provide a combination of channel improvement, stormwater detention, or other  
470 measures that is satisfactory to the VESCP or VESMP authority to prevent  
471 downstream erosion.

472 d. The applicant shall provide evidence of permission to make the improvements.

473 e. All hydrologic analyses shall be based on the existing watershed characteristics and  
474 the ultimate development condition of the subject project.

475 f. If the applicant chooses an option that includes stormwater detention, the applicant  
476 shall obtain approval from the VESCP or VESMP authority for a plan for maintenance  
477 of the detention facilities. The plan shall set forth the maintenance requirements of the  
478 facility and the person responsible for performing the maintenance.

479 g. Outfall from a detention facility shall be discharged to a receiving channel, and  
480 energy dissipators shall be placed at the outfall of all detention facilities as necessary  
481 to provide a stabilized transition from the facility to the receiving channel.

482 h. All on-site channels must be verified to be adequate.

483 i. Increased volumes of sheet flows that may cause erosion or sedimentation on  
484 adjacent property shall be diverted to a stable outlet, adequate channel, pipe, or pipe  
485 system or to a detention facility.

486 j. In applying these stormwater management criteria, individual lots or parcels in a  
487 residential, commercial, or industrial development shall not be considered to be  
488 separate development projects. Instead, the development, as a whole, shall be  
489 considered to be a single development project. Hydrologic parameters that reflect the  
490 ultimate development condition shall be used in all engineering calculations.

491 k. All measures used to protect properties and waterways shall be employed in a  
492 manner that minimizes impacts on the physical, chemical, and biological integrity of  
493 rivers, streams, and other waters of the state.

494 l. Any plan approved prior to July 1, 2014, that provides for stormwater management  
495 that addresses any flow rate capacity and velocity requirements for natural or  
496 manmade channels shall satisfy the flow rate capacity and velocity requirements for  
497 natural or manmade channels if the practices are designed to (i) detain the water  
498 quality volume and to release it over 48 hours; (ii) detain and release over a 24-hour  
499 period the expected rainfall resulting from the one year, 24-hour storm; and (iii) reduce  
500 the allowable peak flow rate resulting from the 1.5-year, two-year, and 10-year 24-hour  
501 storms to a level that is less than or equal to the peak flow rate from the site assuming  
502 the site was in a good forested condition, achieved through multiplication of the  
503 forested peak flow rate by a reduction factor that is equal to the runoff volume from the  
504 site when the site was in a good forested condition divided by the runoff volume from  
505 the site in the site's proposed condition, and shall be exempt from any flow rate  
506 capacity and velocity requirements for natural or manmade channels as defined in any

507 regulations promulgated pursuant to § 62.1-44.15:28 of the Code of Virginia (VESMA)  
508 or § 62.1-44.15:54 or 62.1-44.15:65 of the Code of Virginia (ESCL).

509 m. For plans approved on and after July 1, 2014, the flow rate capacity and velocity  
510 requirements of § 62.1-44.15:52 A of the Code of Virginia (ESCL) and this subdivision  
511 19 shall be satisfied by compliance with water quantity requirements in the VESMA  
512 and attendant regulations, unless such land-disturbing activities (i) are in accordance  
513 with provisions for time limits on applicability of approved design criteria in 9VAC25-  
514 875-480 or grandfathering in 9VAC25-875-490, in which case the flow rate capacity  
515 and velocity requirements of § 62.1-44.15:52 A of the Code of Virginia (ESCL) shall  
516 apply; or (ii) are exempt pursuant to § 62.1-44.15:34 G 2 of the Code of Virginia  
517 (VESMA).

518 n. Compliance with the water quantity minimum standards set out in 9VAC25-875-600  
519 shall be deemed to satisfy the requirements of this subdivision 19.

520 B. All land-disturbing activities shall be conducted in a manner that is consistent with the  
521 applicable requirements of subsection A of this section.

522

523 Part VII

524 Virginia Pollutant Discharge Elimination System (VPDES) Permits

525 Article 1

526 Definitions

527

528 **9VAC25-875-850. Definitions.**

529 For the purposes of this part only, the following words and terms have the following meanings  
530 unless the context clearly indicates otherwise:

531 "Administrator" means the Administrator of the U.S. Environmental Protection Agency or an  
532 authorized representative.

533 "Applicable standards and limitations" means all state, interstate, and federal standards and  
534 limitations to which a discharge or a related activity is subject under the Clean Water Act (CWA)  
535 (33 USC § 1251 et seq.) and VESMA, including effluent limitations, water quality standards,  
536 standards of performance, toxic effluent standards or prohibitions, best management practices,  
537 and standards for sewage sludge use or disposal under §§ 301, 302, 303, 304, 306, 307, 308,  
538 403, and 405 of the CWA.

539 "Approved program" or "approved state" means a state or interstate program that has been  
540 approved or authorized by EPA under 40 CFR Part 123.

541 "Bypass" means the intentional diversion of waste streams from any portion of a treatment  
542 facility.

543 "Contiguous zone" means the entire zone established by the United States under Article 24  
544 of the Convention on the Territorial Sea and the Contiguous Zone (37 FR 11906 June 15, 1972).

545 "Continuous discharge" means a discharge that occurs without interruption throughout the  
546 operating hours of the facility, except for infrequent shutdowns for maintenance, process changes,  
547 or other similar activities.

548 "Co-permittee" means a permittee to a VPDES permit that is only responsible for permit  
549 conditions relating to the discharge for which it is the operator.

550 "Daily discharge" means the discharge of a pollutant measured during a calendar day or any  
551 24-hour period that reasonably represents the calendar day for purposes of sampling. For  
552 pollutants with limitations expressed in units of mass, the daily discharge is calculated as the total  
553 mass of the pollutant discharged over the day. For pollutants with limitations expressed in other  
554 units of measurement, the daily discharge is calculated as the average measurement of the  
555 pollutant over the day.

556 "Discharge" when used without qualification, means the discharge of a pollutant.

557 "Discharge of a pollutant" means:

558 1. Any addition of any pollutant or combination of pollutants to state waters from any point  
559 source; or

560 2. Any addition of any pollutant or combination of pollutants to the waters of the contiguous  
561 zone or the ocean from any point source other than a vessel or other floating craft that is  
562 being used as a means of transportation.

563 This definition includes additions of pollutants into surface waters from surface runoff that is  
564 collected or channeled by man; discharges through pipes, sewers, or other conveyances owned  
565 by a state, municipality, or other person that do not lead to a treatment works; and discharges  
566 through pipes, sewers, or other conveyances, leading into privately owned treatment works. This  
567 term does not include an addition of pollutants by any indirect discharger.

568 "Discharge Monitoring Report" or "DMR" means the form supplied by the department, or an  
569 equivalent form developed by the operator and approved by the department, for the reporting of  
570 self-monitoring results by operators.

571 "Draft permit" means a document indicating the department's tentative decision to issue or  
572 deny, modify, revoke and reissue, terminate, or reissue an individual or general permit. A notice  
573 of intent to deny an individual or general permit is a type of draft permit. A denial of a request for  
574 modification, revocation and reissuance, or termination is not a draft permit.

575 "Effluent limitation" means any restriction imposed by the board on quantities, discharge rates,  
576 and concentrations of pollutants that are discharged from point sources into surface waters, the  
577 waters of the contiguous zone, or the ocean.

578 "Effluent limitations guidelines" means a regulation published by the administrator under §  
579 304(b) of the CWA to adopt or revise effluent limitations.

580 "Existing permit" means for the purposes of this chapter a permit issued by the department  
581 and currently held by a permit applicant.

582 "Existing source" means any source that is not a new source or a new discharger.

583 "Facilities or equipment" means buildings, structures, process or production equipment or  
584 machinery that form a permanent part of a new source and that will be used in its operation if  
585 these facilities or equipment are of such value as to represent a substantial commitment to  
586 construct. The term excludes facilities or equipment used in connection with feasibility,  
587 engineering, and design studies regarding the new source or water pollution treatment for the  
588 new source.

589 "Facility or activity" means any VPDES point source or treatment works treating domestic  
590 sewage or any other facility or activity, including land or appurtenances thereto, that is subject to  
591 regulation under the VPDES program.

592 "Hazardous substance" means any substance designated under the Code of Virginia or 40  
593 CFR Part 116 pursuant to § 311 of the CWA.

594 "Illicit discharge" means any discharge to a municipal separate storm sewer that is not  
595 composed entirely of stormwater, except discharges pursuant to a separate VPDES or permit  
596 (other than the permit for discharges from the municipal separate storm sewer), discharges

597 resulting from firefighting activities, and discharges identified by and in compliance with 9VAC25-  
598 875-970 D 2 c (3).

599 "Indian country" means (i) all land within the limits of any Indian reservation under the  
600 jurisdiction of the United States government, notwithstanding the issuance of any patent, and  
601 including rights-of-way running through the reservation; (ii) all dependent Indian communities  
602 within the borders of the United States whether within the originally or subsequently acquired  
603 territory thereof, and whether within or without the limits of a state; and (iii) all Indian allotments,  
604 the Indian titles to which have not been extinguished, including rights-of-way running through the  
605 same.

606 "Indirect discharger" means a nondomestic discharger introducing "pollutants" to a "publicly  
607 owned treatment works (POTW)."

608 "Large municipal separate storm sewer system" means all municipal separate storm sewers  
609 that are either:

610 1. Located in an incorporated place with a population of 250,000 or more as determined  
611 by the 1990 decennial census by the Bureau of Census (40 CFR Part 122 Appendix F);

612 2. Located in the counties listed in 40 CFR Part 122 Appendix H, except municipal  
613 separate storm sewers that are located in the incorporated places, townships, or towns  
614 within such counties;

615 3. Owned or operated by a municipality other than those described in subdivision 1 or 2  
616 of this definition and that are designated by the department as part of the large or medium  
617 municipal separate storm sewer system due to the interrelationship between the  
618 discharges of the designated storm sewer and the discharges from municipal separate  
619 storm sewers described under subdivision 1 or 2 of this definition. In making this  
620 determination the department may consider the following factors:

621 a. Physical interconnections between the municipal separate storm sewers;

622 b. The location of discharges from the designated municipal separate storm sewer  
623 relative to discharges from municipal separate storm sewers described in subdivision  
624 1 of this definition;

625 c. The quantity and nature of pollutants discharged to surface waters;

626 d. The nature of the receiving surface waters; and

627 e. Other relevant factors;

628 4. The department may, upon petition, designate as a large municipal separate storm  
629 sewer system, municipal separate storm sewers located within the boundaries of a region  
630 defined by a stormwater management regional authority based on a jurisdictional,  
631 watershed, or other appropriate basis that includes one or more of the systems described  
632 in this definition.

633 "Major facility" means any facility or activity classified as such by the regional administrator in  
634 conjunction with the board.

635 "Major municipal separate storm sewer outfall" or "major outfall" means a municipal separate  
636 storm sewer outfall that discharges from a single pipe with an inside diameter of 36 inches or  
637 more or its equivalent (discharge from a single conveyance other than circular pipe which is  
638 associated with a drainage area of more than 50 acres); or for municipal separate storm sewers  
639 that receive stormwater from lands zoned for industrial activity (based on comprehensive zoning  
640 plans or the equivalent), with an outfall that discharges from a single pipe with an inside diameter  
641 of 12 inches or more or from its equivalent (discharge from other than a circular pipe associated  
642 with a drainage area of two acres or more).

643 "Maximum daily discharge limitation" means the highest allowable daily discharge.

644 "Maximum extent practicable" or "MEP" means, in the context of a municipal separate  
645 stormwater sewer system, the technology-based discharge standard for municipal separate storm  
646 sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and  
647 implementing effective structural and nonstructural best management practices (BMPs) and  
648 rejecting ineffective BMPs and replacing them with effective best management practices (BMPs).  
649 MEP is an iterative standard, which evolves over time as urban runoff management knowledge  
650 increases. As such, the operator's MS4 program must continually be assessed and modified to  
651 incorporate improved programs, control measures, and BMPs to attain compliance with water  
652 quality standards.

653 "Medium municipal separate storm sewer system" means all municipal separate storm sewers  
654 that are either:

655 1. Located in an incorporated place with a population of 100,000 or more but less than  
656 250,000 as determined by the 1990 decennial census by the Bureau of Census (40 CFR  
657 Part 122 Appendix G);

658 2. Located in the counties listed in 40 CFR Part 122 Appendix I, except municipal separate  
659 storm sewers that are located in the incorporated places, townships, or towns within such  
660 counties;

661 3. Owned or operated by a municipality other than those described in subdivision 1 or 2  
662 of this definition and that are designated by the department as part of the large or medium  
663 municipal separate storm sewer system due to the interrelationship between the  
664 discharges of the designated storm sewer and the discharges from municipal separate  
665 storm sewers described under subdivision 1 or 2 of this definition. In making this  
666 determination the department may consider the following factors:

- 667 a. Physical interconnections between the municipal separate storm sewers;
- 668 b. The location of discharges from the designated municipal separate storm sewer  
669 relative to discharges from municipal separate storm sewers described in subdivision  
670 1 of this definition;
- 671 c. The quantity and nature of pollutants discharged to surface waters;
- 672 d. The nature of the receiving surface waters; or
- 673 e. Other relevant factors;

674 4. The department may, upon petition, designate as a medium municipal separate storm  
675 sewer system, municipal separate storm sewers located within the boundaries of a region  
676 defined by a stormwater management regional authority based on a jurisdictional,  
677 watershed, or other appropriate basis that includes one or more of the systems described  
678 in subdivisions 1, 2, and 3 of this definition.

679 "Municipality" means a city, town, county, district, association, or other public body created by  
680 or under state law and having jurisdiction over disposal of sewage, industrial wastes, or other  
681 wastes or an Indian tribe or an authorized Indian tribal organization or a designated and approved  
682 management agency under § 208 of the CWA.

683 "New discharger" means any building, structure, facility, or installation:

- 684 1. From which there is or may be a discharge of pollutants;
- 685 2. That did not commence the discharge of pollutants at a particular site prior to August  
686 13, 1979;
- 687 3. Which is not a new source; and
- 688 4. Which has never received a finally effective separate VPDES or permit for discharges  
689 at that site.

690 This definition includes an indirect discharger that commences discharging into surface waters  
691 after August 13, 1979. It also includes any existing mobile point source (other than an offshore or  
692 coastal oil and gas exploratory drilling rig or a coastal oil and gas developmental drilling rig) such  
693 as a seafood processing rig, seafood processing vessel, or aggregate plant that begins  
694 discharging at a site for which it does not have a separate VPDES or permit, and any offshore or  
695 coastal mobile oil and gas exploratory drilling rig or coastal mobile oil and gas developmental  
696 drilling rig that commences the discharge of pollutants after August 13, 1979.

697 "New source" means any building, structure, facility, or installation from which there is or may  
698 be a discharge of pollutants, the construction of which commenced:

699 1. After promulgation of standards of performance under § 306 of the CWA that are  
700 applicable to such source; or

701 2. After proposal of standards of performance in accordance with § 306 of the CWA that  
702 are applicable to such source, but only if the standards are promulgated in accordance  
703 with § 306 of the CWA within 120 days of their proposal.

704 "Oil and gas exploration, production, processing, or treatment operations or transmission  
705 facilities" means all field activities or operations associated with exploration, production, or  
706 treatment operations, or transmission facilities, including activities necessary to prepare a site for  
707 drilling and for the movement and placement of drilling equipment, whether or not such field  
708 activities or operations may be considered to be construction activity. (33 USC § 1362(24))

709 "Outfall," when used in reference to municipal separate storm sewers, means a point source  
710 at the point where a municipal separate storm sewer discharges to surface waters and does not  
711 include open conveyances connecting two municipal separate storm sewers, or pipes, tunnels,  
712 or other conveyances that connect segments of the same stream or other surface waters and are  
713 used to convey surface waters.

714 "Overburden" means any material of any nature, consolidated or unconsolidated, that overlies  
715 a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not  
716 disturbed by mining operations.

717 "Permit" means a VPDES permit issued by the department pursuant to § 62.1-44.15 of the  
718 Code of Virginia for stormwater discharges from a land-disturbing activity or MS4.

719 "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage,  
720 garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials  
721 (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 et  
722 seq.)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and  
723 agricultural waste discharged into water. It does not mean:

724 1. Sewage from vessels; or

725 2. Water, gas, or other material that is injected into a well to facilitate production of oil or  
726 gas or water derived in association with oil and gas production and disposed of in a well if  
727 the well used either to facilitate production or for disposal purposes is approved by the  
728 department and if the department determines that the injection or disposal will not result  
729 in the degradation of groundwater or surface water resources.

730 "Privately owned treatment works" or "PVOTW" means any device or system that is (i) used  
731 to treat wastes from any facility whose operator is not the operator of the treatment works and (ii)  
732 not a POTW.

733 "Publicly owned treatment works" or "POTW" means a treatment works as defined by § 212  
734 of the CWA that is owned by a state or municipality (as defined by § 502(4) of the CWA). This  
735 definition includes any devices and systems used in the storage, treatment, recycling, and  
736 reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers,  
737 pipes, and other conveyances only if they convey wastewater to a POTW treatment plant. The

738 term also means the municipality as defined in § 502(4) of the CWA, that has jurisdiction over the  
739 indirect discharges to and the discharges from such a treatment works.

740 "Recommencing discharger" means a source that recommences discharge after terminating  
741 operations.

742 "Regional administrator" means the Regional Administrator of Region III of the Environmental  
743 Protection Agency or the authorized representative of the regional administrator.

744 "Revoked" means an existing VPDES permit that is terminated by the department before its  
745 expiration.

746 "Runoff coefficient" means the fraction of total rainfall that will appear at a conveyance as  
747 runoff.

748 "Schedule of compliance" means a schedule of remedial measures included in a permit,  
749 including an enforceable sequence of interim requirements (for example, actions, operations, or  
750 milestone events) leading to compliance with the VESMA, the CWA, and regulations.

751 "Secretary" means the Secretary of the Army, acting through the Chief of Engineers.

752 "Severe property damage" means substantial physical damage to property, damage to the  
753 treatment facilities that causes them to become inoperable, or substantial and permanent loss of  
754 natural resources that can reasonably be expected to occur in the absence of a bypass. Severe  
755 property damage does not mean economic loss caused by delays in production.

756 "Significant materials" means but is not limited to raw materials; fuels; materials such as  
757 solvents, detergents, and plastic pellets; finished materials such as metallic products; raw  
758 materials used in food processing or production; hazardous substances designated under §  
759 101(14) of CERCLA (42 USC § 9601(14)); any chemical the facility is required to report pursuant  
760 to § 313 of Title III of SARA (42 USC § 11023); fertilizers; pesticides; and waste products such as  
761 ashes, slag, and sludge that have the potential to be released with stormwater discharges.

762 "Small municipal separate storm sewer system" or "small MS4" means all separate storm  
763 sewers that are (i) owned or operated by the United States, a state, city, town, borough, county,  
764 parish, district, association, or other public body (created by or pursuant to state law) having  
765 jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including  
766 special districts under state law such as a sewer district, flood control district or drainage district,  
767 or similar entity or an Indian tribe or an authorized Indian tribal organization or a designated and  
768 approved management agency under § 208 of the CWA that discharges to surface waters and  
769 (ii) not defined as "large" or "medium" municipal separate storm sewer systems or designated  
770 under 9VAC25-875-950 A 1. This term includes systems similar to separate storm sewer systems  
771 in municipalities, such as systems at military bases, large hospital or prison complexes, and  
772 highway and other thoroughfares. The term does not include separate storm sewers in very  
773 discrete areas, such as individual buildings.

774 "Source" means any building, structure, facility, or installation from which there is or may be  
775 a discharge of pollutants.

776 "Stormwater discharge associated with construction activity" means a discharge of  
777 stormwater runoff from areas where land-disturbing activities (e.g., clearing, grading, or  
778 excavation); construction materials or equipment storage or maintenance (e.g., fill piles, borrow  
779 area, concrete truck washout, fueling); or other industrial stormwater directly related to the  
780 construction process (e.g., concrete or asphalt batch plants) are located.

781 "Stormwater discharge associated with large construction activity" means the discharge of  
782 stormwater from large construction activities.

783 "Stormwater discharge associated with small construction activity" means the discharge of  
784 stormwater from small construction activities.

785 "Total dissolved solids" means the total dissolved (filterable) solids as determined by use of  
786 the method specified in 40 CFR Part 136.

787 "Toxic pollutant" means any pollutant listed as toxic under § 307(a)(1) of the CWA or, in the  
788 case of sludge use or disposal practices, any pollutant identified in regulations implementing §  
789 405(d) of the CWA.

790 "Upset" means an exceptional incident in which there is unintentional and temporary  
791 noncompliance with technology based permit effluent limitations because of factors beyond the  
792 reasonable control of the operator. An upset does not include noncompliance to the extent caused  
793 by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack  
794 of preventive maintenance, or careless or improper operation.

795 "Variance" means any mechanism or provision under § 301 or 316 of the CWA or under 40  
796 CFR Part 125, or in the applicable federal effluent limitations guidelines that allows modification  
797 to or waiver of the generally applicable effluent limitation requirements or time deadlines of the  
798 CWA. This includes provisions that allow the establishment of alternative limitations based on  
799 fundamentally different factors or on § 301(c), (g), (h), or (i), or 316(a) of the CWA.

800 "Virginia Pollutant Discharge Elimination System permit" or "VPDES permit" means a  
801 document issued by the department pursuant to the State Water Control Law authorizing, under  
802 prescribed conditions, the potential or actual discharge of pollutants from a point source to surface  
803 waters.

804 "Water quality standards" or "WQS" means provisions of state or federal law that consist of a  
805 designated use or uses for the waters of the Commonwealth and water quality criteria for such  
806 waters based on such uses. Water quality standards are to protect the public health or welfare,  
807 enhance the quality of water, and serve the purposes of the State Water Control Law (§ 62.1-44.2  
808 et seq. of the Code of Virginia), the VESMA (§ 62.1-44.15:24 et seq. of the Code of Virginia), and  
809 the CWA (33 USC § 1251 et seq.).

810 "Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly by  
811 a toxicity test.

812



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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-875
<b>VAC Chapter title(s)</b>	Virginia Erosion and Stormwater Management Regulation
<b>Action title</b>	Amend and update the Virginia Erosion and Stormwater Management Regulation to correct technical errors
<b>Date this document prepared</b>	May 8, 2024

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

### Brief Summary

*Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.*

The intent of this fast-track regulatory action is to correct technical errors in the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875, effective July 1, 2024) that have been identified since publication in the *Virginia Register of Regulations* on December 4, 2023. (40:8 VA.R. 461-557, December 4, 2023.)

The technical corrections will improve clarity and certainty by making the VESM Regulation internally consistent, removing outdated requirements, and accurately reflecting requirements in the State Water Control Law. Chapter 3.1 of Title 62.1 of the Code of Virginia (§ 62.1-44.2 et seq.).

### Acronyms and Definitions

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

- BMP: Best management practice
- DEQ (or Department): Department of Environmental Quality
- ESCL: Erosion and Sediment Control Law for Localities Not Administering a Virginia Erosion and Stormwater Management Program, Code of Virginia § 62.1-44.15:51 et seq., effective July 1, 2024
- MS4: Municipal Separate Stormwater Sewer System
- VAC: Virginia Administrative Code
- VESCP: Virginia Erosion and Sediment Control Program
- VESMP: Virginia Erosion and Stormwater Management Program
- VESM Regulation: Virginia Erosion and Stormwater Management Regulation, 9VAC25-875
- VPDES: Virginia Pollutant Discharge Elimination System

### Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 25, 2024, the State Water Control Board:

1. Authorized DEQ to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) DEQ does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
2. Authorized DEQ to set an effective date 15 days after close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) DEQ does not find it necessary to make any changes to the proposal.

### Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Section 62.1-44.15:28 of the Code of Virginia (effective July 1, 2024) authorizes the Board to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any Virginia Erosion and Stormwater Management Program (VESMP) to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources; subsection 3 requires the Board's regulations to be based upon relevant physical and developmental information concerning the watersheds and drainage basins of the

Commonwealth, including data relating to land use, soils, hydrology, geology, size of land area being disturbed, proximate water bodies and their characteristics, transportation, and public facilities and services; and subsection 6 requires the regulations to establish water quality and water quantity technical criteria that shall be periodically modified as required in order to reflect current engineering methods.

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the regulated community and other stakeholders who have been involved in the process to adopt the VESM Regulation and develop the new Virginia Stormwater Management Handbook (GM24-2001, available here: <https://townhall.virginia.gov/L/ViewGDoc.cfm?gdid=7706>) have requested changes that clarify requirements for localities that implement erosion and stormwater management programs or erosion and sediment control programs and correct other technical errors that have been identified since publication of the final regulation in December 2023.

The limited scope of this rulemaking benefits the regulated community, localities, DEQ, and other stakeholders by correcting technical errors and improving clarity in a timely manner.

### Legal Basis

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

#### Promulgating Entity

The promulgating entity for this regulation is the State Water Control Board.

#### State Requirements

Section 62.1-44.15 (3a) of the Code of Virginia (effective July 1, 2024) requires the Board to establish such standards of quality and policies for any state waters consistent with the general policy set forth in the State Water Control Law; subsection (5) requires the Board to issue, revoke, or amend certificates and land-disturbance approvals under prescribed conditions for (a) the discharge of sewage, stormwater, industrial wastes, and other wastes into or adjacent to state waters; and subsection (10) requires the Board to adopt such regulations as it deems necessary to enforce the general soil erosion control and stormwater management program and water quality management program of the Board in all or part of the Commonwealth.

Additional authority for the Board to adopt and amend regulations for erosion control and stormwater management is in § 62.1-44.15:28 as cited above.

### Purpose

*Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it is intended to solve.*

The proposed regulatory action protects water quality in the Commonwealth of Virginia which is essential to the health, safety and welfare of Virginia’s citizens and is needed in order to establish appropriate and necessary permitting requirements for discharges of stormwater. The goal of this regulatory action is to amend Chapter 875 to improve clarity and certainty by making the VESM Regulation internally consistent,

removing outdated requirements, and accurately reflecting requirements in the State Water Control Law, Chapter 3.1 of Title 62.1 of the Code of Virginia (§ 62.1-44.2 et seq.).

## Substance

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

Technical corrections and changes to the Virginia Erosion and Stormwater Management Regulation include:

- Correcting cross-references to Chesapeake Bay Preservation Area requirements (e.g., 9VAC25-875-70, 9VAC25-875-250, and 9VAC25-875-470);
- Moving subsection G of 9VAC25-875-300 to 9VAC25-875-550 E so that the requirement for owners to maintain, inspect, and repair erosion and sediment control structures is in the part of the regulation that has other owner requirements, not the part of the regulation that is specific to localities;
- Updating the Department’s provisions for reviewing and evaluating a locality’s erosion and sediment control program (9VAC25-875-370 D) so that they are consistent with the requirements in the State Water Control Law;
- Removing requirements related to grandfathering that are no longer applicable (9VAC25-875-490); and
- Clarifying that an erosion and sediment control plan, which is included in a stormwater pollution prevention plan for land-disturbing activity, must be consistent with the erosion and sediment control criteria, techniques, and methods (minimum standards, 9VAC25-875-560).

Collectively, these and other technical corrections will provide clarity and improve understanding of the regulation.

## Issues

*Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.*

1. Public: There are no direct impacts on public health as the amendments update existing regulatory requirements, so they reflect current requirements in the State Water Control Law, clarify requirements, and improve understanding of the regulation, which in turn contributes to the efficient and effective functioning of government. There are no disadvantages to the public.

2. DEQ: The amendments update existing regulatory requirements and will allow DEQ and localities that implement erosion and stormwater management programs or erosion and sediment control programs to utilize regulations that reflect current requirements in the State Water Control Law, and improve the understanding of the regulation, which in turn contributes to the efficient and effective functioning of government. This is an advantage. There are no disadvantages to the agency or the Commonwealth.

## Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and 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 specific statement to that effect.*

There are no applicable federal requirements and therefore no requirements that exceed federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "Particularly affected" are those that are likely to bear any identified disproportionate material impact which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.*

Other State Agencies Particularly Affected

There is no state agency which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other state agencies.

Localities Particularly Affected

There is no locality which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other localities.

Other Entities Particularly Affected

There is no entity which will bear any identified disproportionate material water quality impact due to the proposal which would not be experienced by other entities.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:</p> <ul style="list-style-type: none"> <li>a) fund source / fund detail;</li> <li>b) delineation of one-time versus on-going expenditures; and</li> <li>c) whether any costs or revenue loss can be absorbed within existing resources</li> </ul>	<p>The regulatory change will not result in any cost to DEQ.</p>
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<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	The regulatory change will not result in any cost to any state agency.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The direct benefit to state agencies of making technical corrections and improving clarity of requirements will be to save time for localities and the regulated community, improve understanding of regulatory requirements, and result in better compliance with the minimum standards for erosion and sediment control and stormwater management program requirements.

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

Projected costs, savings, fees or revenues resulting from the regulatory change.	No impacts to any locality are anticipated.
Benefits the regulatory change is designed to produce.	ORM Economic Impact form, Table 2

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	ORM Economic Impact form, Tables 1a, 3 and 4
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	ORM Economic Impact form, Tables 1a, 3 and 4
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	ORM Economic Impact form, Tables 1a, 3 and 4

Benefits the regulatory change is designed to produce.	Updating regulations will allow localities to perform better for a lower cost in many cases; promotes the efficient and effective functioning of government.
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### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. 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 regulatory change.*

There are no practical alternatives. Leaving technical errors in Chapter 875 will likely cause misunderstanding, confusion, and inconsistent application of regulatory requirements for DEQ and the localities that implement erosion and stormwater management or erosion and sediment control programs.

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, describe the agency’s analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the regulatory change.*

There are no alternatives to this regulatory action other than continuing to operate with the existing language with no updates.

This regulatory change is very limited in scope to include technical changes for consistency with state law and/or to provide clarify and certainty. This action does not change the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. In addition, it does not change the technical requirements, such as erosion and sediment control minimum standards and post-construction stormwater management criteria that protect public health and the environment.

### Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

DEQ is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Rebecca Rochet, Deputy Director, Water Permitting Division, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218, or [Rebecca.Rochet@deq.virginia.gov](mailto:Rebecca.Rochet@deq.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

### Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-875-70 A 2		Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable...	Changes applicable article in Part V from Article 3 to Article 5:  Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 <del>5</del> (9VAC25-875-570 <del>740</del> et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable...  This is a technical correction to the regulation to clarify applicable

			requirements in Chesapeake Bay Preservation Areas.
9VAC25-875-250 A 1		1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, not in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.	Removes upper limit of one acre to make the requirement to comply with erosion and sediment control criteria consistent with the statutory requirement at § 62.1-44.15:55 (effective July 1, 2024):  1. Land-disturbing activity that disturbs 10,000 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, <del>is less than one acre,</del> and not in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 (9VAC25-875-540 et seq.) of Part V (9VAC25-875-470 et seq.) of this chapter.  This is a technical correction to the regulation to be consistent with state law.
9VAC25-875-250 A 2		2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 of Part V of this chapter.	Removes upper limit of one acre to make requirement to comply with erosion and sediment control criteria consistent with statutory requirement at § 62.1-44.15:55 (effective July 1, 2024) and cites both articles in Part V that are applicable to land disturbing activities in a Chesapeake Bay Preservation Area:  2. Land-disturbing activity that disturbs 2,500 square feet or more, although the locality may reduce this regulatory threshold to a smaller area of disturbed land, <del>is less than one acre,</del> and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 <u>and Article 5 (9VAC25-875-740 et seq.)</u> of Part V of this chapter.  These are technical corrections to the regulation to be consistent with state law and to clarify applicable requirements in Chesapeake Bay Preservation Areas.
9VAC25-875-280 9		9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory	Specifies that regulations adopted pursuant to the ESCL are 9VAC25-875:

		<p>authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and the regulations adopted pursuant thereto;</p>	<p>9. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Virginia Marine Resources Commission, or the U.S. Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to the ESCL and <del>the regulations adopted pursuant thereto</del> <u>this chapter</u>;</p> <p>This is a technical correction to the regulation.</p>
<p>9VAC25-875-300 A and B</p>		<p>A. The VESCP authority shall review erosion and sediment control plans that detail the criteria, techniques, and methods as defined in 9VAC25-875-550 for land-disturbing activities described in 9VAC25-875-560. Activities not required to comply with VESCL are defined in 9VAC25-875-280.</p> <p>B. When determined that the plan meets the minimum criteria, techniques, and methods as defined in 9VAC25-875-550, the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.</p>	<p>A. The VESCP authority shall review erosion and sediment control plans <u>prepared in accordance with 9VAC25-875-550</u> and detail the criteria, techniques, and methods as defined in 9VAC25-875-<del>550</del><u>560</u> for land-disturbing activities described in <del>9VAC25-875-560</del>. Activities not required to comply with VESCL are defined in 9VAC25-875-280.</p> <p>B. When determined that the plan meets the minimum criteria, techniques, and methods as defined in 9VAC25-875-<del>550</del><u>560</u>, the VESCP authority shall review erosion and sediment control plans submitted and grant written approval within 60 days of the receipt of the plan.</p> <p>This is a technical correction to the regulation to correct the regulatory citations for the preparation of erosion and sediment control plans, as well as the location of the criteria, techniques, and methods for erosion and sediment control plans.</p>
<p>9VAC25-875-300 G</p>		<p>G. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved</p>	<p>9VAC25-875-300 is intended to outline the requirements for a VESCP authority to review erosion and sediment controls plans.</p> <p>Subsection G is being relocated to 9VAC25-875-550 E as this requirement outlines a requirement of the actual plan, not a requirement for the VESCP authority in reviewing plans.</p>

		<p>erosion and sediment control plan.</p>	
<p>9VAC25-875-370 D</p>		<p>If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action, then the department shall have the authority to (i) issue a special order to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the Code of Virginia or (ii) revoke its approval of the VESCP.</p>	<p>Removes revocation of the VESCP as an alternative when a VESCP authority fails to implement necessary compliance actions identified by the Department and replaces it with options specified in § 62.1-44.15 (19):</p> <p>If deficiencies noted in the review will cause the VESCP to be inconsistent with the ESCL or this chapter, the department shall provide the VESCP authority with a copy of the department's decision that specifies the deficiencies, action needed to be taken, and an approved corrective action plan and schedule required to attain the minimum standard of effectiveness. If the VESCP authority <del>has not implemented the necessary compliance actions identified by the department within the corrective action schedule, or such additional period as is granted to complete the implementation of the corrective action,</del> then the department shall have the authority to (i) issue a special order to any VESCP authority imposing a civil penalty set out in § 62.1-44.15 of the Code of Virginia or (ii) <u>revoke its approval of the VESCP fails to bring its program into compliance in accordance with the compliance schedule, then the department is authorized to (i) issue a special order to any locality imposing a civil penalty not to exceed \$ 5,000 per violation with the maximum amount not to exceed \$ 50,000 per order for noncompliance with the state program, to be paid into the state treasury and deposited in the Stormwater Local Assistance Fund established in § 62.1-44.15:29.1 of the Code of Virginia or (ii) with the consent of the locality, provide in an order issued against the locality for the payment of civil charges for violations in lieu of civil penalties, in specific sums not to exceed the limit stated in this subdivision.</u></p> <p>This is a technical correction to the regulation to make it consistent with</p>

			state law (§ 62.1-44.15 (19) (effective July 1, 2024)).
9VAC25-875-470 A 2		Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article 3 (9VAC25-875-570 et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable...	<p>Changes applicable article in Part V from Article 3 to Article 5:</p> <p>Land-disturbing activity that disturbs 2,500 square feet or more, although a locality may reduce this regulatory threshold to a smaller area of disturbed land, is less than one acre, and in an area of a locality designated as a Chesapeake Bay Preservation Area is subject to criteria defined in Article 2 and Article <del>3</del> 5 (9VAC25-875-570<del>740</del> et seq.) of Part V unless Article 4 (9VAC25-875-670 et seq.) of Part V of this chapter is applicable...</p> <p>This is a technical correction to the regulation to clarify applicable requirements in Chesapeake Bay Preservation Areas.</p>
9VAC25-875-490 A and C		<p>A. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 (9VAC25-875-670 et seq.) of this part provided:</p> <p>1. A proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan, or any document determined by the locality to be equivalent thereto (i) was approved by the locality prior to July 1, 2012; (ii) provided a layout as defined in 9VAC25-875-670; (iii) will comply with the technical criteria of Article 4 of this part; and (iv) has not been subsequently modified or amended in a manner resulting in an increase in the amount of phosphorus leaving each point of discharge and such that there is no increase in the volume or rate of runoff;</p>	<p>Deletes subsections A and C and relabels remaining sections accordingly.</p> <p>Subsections A and C are no longer applicable because land-disturbing activities that were grandfathered under subsection A were only subject to the technical criteria of Article 4 for one 5-year permit cycle after 2014 (subsection C). Applicability ended with the re-issuance of the General VPDES Permit for Discharges of Construction Stormwater, 9VAC25-880, when it became effective on July 1, 2019.</p> <p>This is a technical correction to the regulation to remove requirements that are no longer applicable.</p>

		<p>2. A permit has not been issued prior to July 1, 2014; and</p> <p>3. Land disturbance did not commence prior to July 1, 2014. Any land-disturbing activity shall be considered grandfathered by the VESMP authority and shall be subject to the technical criteria of Article 4 provided that a proffered or conditional zoning plan, zoning with a plan of development, preliminary or final subdivision plat, preliminary or final site plan was adopted prior to July 1, 2012, a permit has not been issued prior to July 1, 2014, and land disturbance did not commence prior to July 1, 2014.</p> <p>C. Land disturbing activities grandfathered under subsections A and B of this section shall remain subject to the technical criteria of Article 4 of this part for one additional permit cycle. After such time, portions of the project not under construction shall become subject to any new technical criteria adopted by the board.</p>	
<p>9VAC25-875-500 B</p>		<p>B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the department.</p>	<p>B. An erosion and sediment control plan consistent with the requirements of 9VAC25-875-550 <u>and 9VAC25-875-560</u> must be designed and implemented during construction activities. Prior to land disturbance, this plan must be approved by the VESCP authority, VESMP authority, or the department.</p> <p>This is a technical correction to clarify that erosion and sediment control plans must meet the requirements of both 9VAC25-875-550 and 9VAC25-875-560.</p>
<p>9VAC25-875-550 A</p>		<p>A. An erosion and sediment control plan shall be filed for</p>	<p>Clarifies requirements for erosion and sediment control plans by adding the</p>

		<p>a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives in 9VAC25-875-560. The erosion and sediment control plan may include:</p>	<p>name of the requirements that are in 9VAC25-875-560:</p> <p>A. An erosion and sediment control plan shall be filed for a development and the buildings constructed within, regardless of the phasing of construction. The erosion and sediment control plan shall contain all major conservation decisions to ensure that the entire unit of land will be so treated to achieve the conservation objectives and <u>minimum standards</u> in 9VAC25-875-560. The erosion and sediment control plan may include:</p> <p>This is a technical correction to the regulation to properly refer to the minimum standards in 9VAC25-875-560. Minimum Standards.</p>
	9VAC25-875-550 E		<p>E. All erosion and sediment control structures and systems shall be maintained, inspected, and repaired as needed to ensure continued performance of their intended function. A statement describing the maintenance responsibilities of the individual responsible for carrying out the land-disturbing activity shall be included in the approved erosion and sediment control plan.</p> <p>This language was relocated from 9VAC25-875-300 E for clarification as it relates to the requirements of the erosion and sediment control plan contents, not the review performed by the VESCP authority.</p>
9VAC25-875-560	9VAC25-875-560 A	An erosion and sediment control plan...	<p><u>A.</u> An erosion and sediment control plan...</p> <p>Added Subsection “A” and “B” labels to comply with regulatory formatting requirements.</p>
	9VAC25-875-560 B		<p><u>B.</u> All land-disturbing activities shall be conducted in a manner that is consistent with the applicable requirements of subsection A of this section.</p> <p>Subsection B provides certainty to the regulated community by clearly stating a requirement that has been implied by the regulation, that all land-disturbing</p>

			<p>activities shall be conducted in a manner consistent with the minimum standards.</p>
<p>9VAC25-875-850 Definition of "Maximum extent practicable"</p>		<p>"Maximum extent practicable" or "MEP" means the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, and BMPs to attain compliance with water quality standards.</p>	<p>Adds condition to ensure use of the term, as defined in the section, is consistent with and limited to MS4s:</p> <p>"Maximum extent practicable" or "MEP" means, <u>in the context of a municipal separate stormwater sewer system</u>, the technology-based discharge standard for municipal separate storm sewer systems established by CWA § 402(p). MEP is achieved, in part, by selecting and implementing effective structural and nonstructural best management practices (BMPs) and rejecting ineffective BMPs and replacing them with effective best management practices (BMPs). MEP is an iterative standard, which evolves over time as urban runoff management knowledge increases. As such, the operator's MS4 program must continually be assessed and modified to incorporate improved programs, control measures, and BMPs to attain compliance with water quality standards.</p> <p>This is a technical correction to ensure, where the term is used in other parts of the regulation, the meaning is appropriate for the context.</p>

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	Department of Environmental Quality (“Department”)
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC 25-875
<b>VAC Chapter title(s)</b>	Virginia Erosion and Stormwater Management Regulation
<b>Action title</b>	Amend and update the Virginia Erosion and Stormwater Management Regulation to correct technical errors
<b>Date this document prepared</b>	June 5, 2024
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Fast-Track Regulation

**Cost Benefit Analysis**

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

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

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

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b><u>Background</u></b></p> <p>Chapters 68 and 758 of the 2016 Acts of Assembly (the “Consolidation Bill”), as amended by Chapters 656 and 666 of the 2023 Acts of Assembly, combined requirements in the Stormwater Management Act and Erosion and Sediment Control Law to create the Virginia Erosion and Stormwater Management Act (effective July 1, 2024). The Consolidation Bill directed the State Water Control Board (Board) to adopt regulations – to permit, regulate, and control both erosion and</p>
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stormwater runoff – for the legislation to become effective. At its June 22, 2023 meeting, the Board approved final regulations that consolidated 9VAC25-840 (Erosion and Sediment Control Regulations), 9VAC25-850 (Erosion and Sediment Control and Stormwater Certification Regulations), and 9VAC25-870 (Virginia Stormwater Management Program Regulations) into a single regulatory chapter, the Virginia Erosion and Stormwater Management Regulation (9VAC25-875). The Virginia Erosion and Stormwater Management (VESM) Regulation becomes effective July 1, 2024, concurrent with the effective date of the Consolidation Bill, as amended.

Consistent with the Notice of Intended Regulatory Action for Chapter 870 that was posted in the Virginia Register of Regulations on February 4, 2019, no substantive changes to existing erosion and sediment control minimum standards or to the post-construction stormwater management technical criteria were part of the regulatory action that resulted in the Board’s adoption of Chapter 875. The intent of this regulatory action is to amend Chapter 875 by correcting technical errors that have been identified since the publication of the final regulation in December 2023.

**Direct & Indirect Costs:**

The Virginia Erosion and Stormwater Management (VESM) Regulation revisions include technical changes for consistency with state law and/or to provide clarity and certainty to localities that implement either erosion and stormwater management or erosion and sediment control programs. This action does not change the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. In addition, it does not change the technical requirements such as erosion and sediment control minimum standards and post-construction stormwater management criteria that protect public health and the environment. Therefore, there are no significant new direct or indirect costs associated with the proposed changes.

**Direct Benefits:**

The technical corrections ensure the VESM Regulation is consistent with state law and internally consistent to provide clarity and certainty to stakeholders and the localities that implement erosion and stormwater management or erosion and sediment control programs. This regulatory action makes the regulation easier to understand and implement, as well as providing certainty to stakeholders. The Department is unable to quantify these benefits because they do not make any substantive changes to the regulation or its requirements.

**Indirect Benefits:**

	Improving clarity of requirements saves time for localities and the regulated community, improves understanding of regulatory requirements, and should result in better compliance with the minimum standards for erosion and sediment control and stormwater management program requirements (i.e., limits on water quantity and water quality that are released to surface waters from land-disturbance sites). Better compliance protects state waters, water quality, habitat, and recreational use.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with these regulatory changes.	(b) The Department is unable to quantify these benefits.
(3) Net Monetized Benefit	Unknown (see discussion above).	
(4) Other Costs & Benefits (Non-Monetized)	Unknown (see discussion above).	
(5) Information Sources	Department permit records; communications with Department staff that worked for consulting firms that prepare and work with stormwater plans.	

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> The “status quo” option would be to continue to use language that is inconsistent with existing law, internally inconsistent, or vague. No direct costs will be occurred by the Department.</p> <p><b>Indirect Costs:</b> The primary indirect costs with the “status quo” are the additional operator, consultant, Department, and local authority staff time to resolve plan review issues due to the inconsistencies between the VESM Regulation and the existing specifications and outdated manuals. The Department is unable to quantify these costs.</p> <p><b>Direct Benefits:</b> There are no benefits to maintaining incorrect information and requirements in the regulation.</p> <p><b>Indirect Benefits:</b> There are not any indirect benefits to maintaining the status quo.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to monetize indirect costs associated with the status quo.	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>The Department is not aware of any alternatives to this regulatory change. The regulatory change is very limited in scope to include technical changes for consistency with state law and/or to provide clarify and certainty. This action does not change the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. In addition, it does not change the technical requirements such as erosion and sediment control minimum standards and post-construction stormwater management criteria that protect public health and the environment.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	N/A	N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Impact on Local Partners**

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

**Table 2: Impact on Local Partners**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> There are no direct costs to local partners because this action does not change the existing responsibilities of local governments to implement either an erosion and stormwater management or erosion and sediment control program consistent with requirements in the Stormwater Management Act and Erosion and Sediment Control Law (Chapters 2.3 and 2.4 of the State Water Control Law, Article 3.1 of Title 62.1 of the Code of Virginia).</p> <p><b>Indirect Costs:</b> The indirect costs associated with the proposed change are additional staff time necessary for local staff to gain awareness of and implement the regulatory changes. The Department is unable to quantify these costs.</p> <p><b>Direct Benefits:</b> The direct benefit to local partners is reduced confusion, which will result in less staff time in reviewing, inspecting, and working through issues before and during construction.</p> <p><b>Indirect Benefits:</b> The indirect benefits associated with this change is that construction projects will be completed faster and with fewer delays caused by uncertainty, thus supporting economic growth within the locality.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits

	(a) Unable to monetize direct and indirect costs.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Assistance	N/A	
(5) Information Sources	N/A	

**Impacts on Families**

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

**Table 3: Impact on Families**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> There are no direct costs that impact families associated with the proposed changes.</p> <p><b>Indirect Costs:</b> There are no indirect costs that impact families associated with the proposed changes.</p> <p><b>Direct Benefits:</b> There are no direct benefits that impact families associated with the proposed changes.</p> <p><b>Indirect Benefits:</b> There are no indirect benefits that impact families associated with the proposed changes.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	

(4) Information Sources	N/A
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**Impacts on Small Businesses**

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

**Table 4: Impact on Small Businesses**

(1) Direct & Indirect Costs & Benefits (Monetized)	Small businesses would have the same impact as described in 1a above. The department is unable to identify the number of small businesses that would benefit from this regulatory change.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with the regulatory changes.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Alternatives	N/A	
(5) Information Sources	N/A	

## Changes to Number of Regulatory Requirements

**Table 5: Regulatory Reduction**

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

### *Change in Regulatory Requirements*

<b>VAC Section(s) Involved*</b>	<b>Authority of Change</b>	<b>Initial Count</b>	<b>Additions</b>	<b>Subtractions</b>	<b>Total Net Change in Requirements</b>
9VAC25-875-70	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	1	0	0	0
	<b>(D/R):</b>	0	0	0	0
9VAC25-875-250	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	1	0	0	0
	<b>(D/R):</b>	0	0	0	0
9VAC25-875-280	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	1	0	0	0
	<b>(D/R):</b>	0	0	0	0
9VAC25-875-300	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	10	0	2	-2
	<b>(D/R):</b>	0	0	0	0
9VAC25-875-370	<b>(M/A):</b>	8	0	1	-1
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	10	0	0	0
	<b>(D/R):</b>	0	0	0	0
9VAC25-875-470	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	1	0	0	0
	<b>(D/R):</b>	0	0	0	0
9VAC25-875-490	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	2	0	1	-1
	<b>(D/R):</b>	0	0	0	0
9VAC25-875-500	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	7	0	0	0

	<b>(D/R):</b>	0	0	0	0
9VAC25-875-550	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	4	2	0	+2 <sup>A</sup>
	<b>(D/R):</b>	0	0	0	0
9VAC25-875-560	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	59	1	0	+1 <sup>B</sup>
	<b>(D/R):</b>	0	0	0	0
9VAC25-875-850	<b>(M/A):</b>	0	0	0	0
	<b>(D/A):</b>	0	0	0	0
	<b>(M/R):</b>	0	0	0	0
	<b>(D/R):</b>	0	0	0	0
				<b>Grand Total of Changes in Requirements:</b>	<b>(M/A):-1</b>
					<b>(D/A):0</b>
					<b>(M/R):0</b>
					<b>(D/R): 0</b>

<sup>A</sup> The “additional requirements” in 9VAC25-875-550 have been moved from 9VAC25-875-300 without any changes to the requirements.

<sup>B</sup> The additional requirement in 9VAC25-875-560 provides clarification by stating what is implied by the 59 existing requirements – that land-disturbing activities shall be conducted in a manner that is consistent with the minimum standards that are required to be part of the permittee’s erosion and sediment control plan.

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Cost Reductions or Increases (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Requirement</b>	<b>Initial Cost</b>	<b>New Cost</b>	<b>Overall Cost Savings/Increases</b>
N/A				

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Change</b>	<b>Overview of How It Reduces or Increases Regulatory Burden</b>
N/A		

*Length of Guidance Documents (only applicable if guidance document is being revised)*

<b>Title of Guidance Document</b>	<b>Original Length</b>	<b>New Length</b>	<b>Net Change in Length</b>
N/A			