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HOUSE BILL NO. 1847

Offered January 10, 2007

Prefiled January 3, 2007

A BILL to amend and reenact § 62.1-44.19:15 of the Code of Virginia, relating to the granting of waste load allocations for the Chesapeake Bay watershed nutrient credit exchange program to certain facilities.

Patron—Saxman

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 62.1-44.19:15 of the Code of Virginia is amended and reenacted as follows:**

§ 62.1-44.19:15. New or expanded facilities.

A. An owner or operator of a new or expanded facility shall comply with the applicable requirements of this section as a condition of the facility's coverage under the general permit.

1. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day, or an equivalent load directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his waste load allocations or permitted design capacity as of July 1, 2005, and will install state-of-the-art nutrient removal technology at the time of the expansion.

2. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 100,000 gallons or more per day up to and including 499,999 gallons per day, or an equivalent load, directly into nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005, and will install, at a minimum, biological nutrient removal technology at the time of the expansion.

3. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued before July 1, 2005, that expands his facility to discharge 40,000 gallons or more per day up to and including 99,999 gallons per day, or an equivalent load, directly into tidal or nontidal waters, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as of July 1, 2005.

4. An owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit first issued on or after July 1, 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall demonstrate to the Department that he has acquired waste load allocations sufficient to offset his delivered total nitrogen and delivered total phosphorus loads, and will install (i) at a minimum, biological nutrient removal technology at any facility authorized to discharge up to and including 99,999 gallons per day, or an equivalent load, directly into tidal and nontidal waters, or up to and including 499,999 gallons per day, or an equivalent load, to nontidal waters; and (ii) state-of-the-art nutrient removal technology at any facility authorized to discharge 100,000 gallons or more per day, or an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal waters.

B. Waste load allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this subsection.

1. Such allocations may be acquired from one or a combination of the following:

a. Acquisition of all or a portion of the waste load allocations from one or more permitted facilities in the same tributary;

b. Acquisition of nonpoint source load allocations through the use of best management practices acquired through a public or private entity acting on behalf of the land owner. Such best management practices shall achieve reductions beyond those already required by or funded under federal or state law, or the Virginia tributaries strategies plans, and shall be installed in the same tributary in which the new or expanded facility is located and included as conditions of the facility's individual Virginia Pollutant Discharge Elimination System permit; or

c. Acquisition of allocations in accordance with the terms of the general permit or through such other

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59 means as may be approved by the Department on a case-by-case basis.

60 2. The Board shall give priority to allocations acquired in accordance with subdivisions B 1 a and B
61 1 b. The Board shall approve allocations acquired in accordance with subdivision B 1 c only after the
62 owner or operator has demonstrated that he has made a good faith effort to acquire sufficient allocations
63 in accordance with subdivisions B 1 a and B 1 b and that such allocations are not reasonably available
64 taking into account timing, cost, and other relevant factors.

65 3. *Notwithstanding the priority provisions in subdivision B 2, the Board may grant a waste load*
66 *allocation in accordance with subdivision B 1 c to an owner or operator of a facility authorized by a*
67 *Virginia Pollution Abatement Permit to land apply domestic sewage if (i) the Virginia Pollution*
68 *Abatement permit was issued before July 1, 2005; (ii) the waste load allocation does not exceed such*
69 *facility's permitted design capacity as of July 1, 2005; (iii) the waste treated by the existing facility is*
70 *going to be treated and discharged pursuant to a Virginia Pollutant Discharge Elimination System for a*
71 *new discharge; and (iv) the owner or operator installs state-of-the-art nutrient removal technology at*
72 *such facility. Such facilities cannot generate credits or waste load allocations, based upon the removal*
73 *of land application sites, that can be acquired by other permitted facilities to meet the requirements of*
74 *this article.*

75 C. Until such time as the Board finds that no allocations are reasonably available in an individual
76 tributary, the general permit shall provide for the acquisition of allocations through payments into the
77 Virginia Water Quality Improvement Fund established in § 10.1-2128. Such payments shall be promptly
78 applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond those
79 reductions already required by or funded under federal or state law or the Virginia tributaries strategies
80 plans. The general permit shall base the cost of each pound of allocation on (i) the estimated cost of
81 achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the
82 allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost of
83 reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each
84 pound of allocation acquired, whichever is higher. Upon each reissuance of the general permit, the
85 Board may adjust the cost of each pound of allocation based on current costs and cost estimates.