

VIRGINIA ACTS OF ASSEMBLY -- 2010 SESSION

CHAPTER 11

An Act to amend and reenact § 62.1-44.19:18 of the Code of Virginia, relating to nutrient trading for facilities in the Eastern Shore basin.

[H 1290]

Approved February 26, 2010

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.19:18 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.19:18. Nutrient allocation compliance and reporting.

A. Each permitted facility shall be in compliance with its individual waste load allocations if: (i) its annual mass load is less than the applicable waste load allocation assigned to the facility in the general permit; (ii) the permitted facility acquires sufficient point source nitrogen or phosphorus credits in accordance with subdivision A 1; or (iii) in the event it is unable to meet the individual waste load allocation pursuant to clauses (i) or (ii), the permitted facility acquires sufficient nitrogen or phosphorus credits through payments made in accordance with subdivision A 2; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or otherwise affect the individual waste load allocations for each permitted facility.

1. A permittee may acquire point source nitrogen or phosphorus credits from one or more permitted facilities only if (i) the credits are generated and applied to a compliance obligation in the same calendar year, (ii) the credits are generated by one or more permitted facilities in the same tributary, *except that permitted facilities in the Eastern Shore basin may also acquire credits from permitted facilities in the Potomac and Rappahannock tributaries*, (iii) the credits are acquired no later than June 1 immediately following the calendar year in which the credits are applied, and (iv) no later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the Department that he has acquired sufficient credits to satisfy his compliance obligations.

2. A permittee may acquire nitrogen or phosphorus credits through payments made into the Virginia Water Quality Improvement Fund established in § 10.1-2128 only if, no later than June 1 immediately following the calendar year in which the credits are applied, the permittee certifies on a form supplied by the Department that he has diligently sought, but has been unable to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point source nitrogen or phosphorus credits with other permitted facilities in the same tributary, and that he has acquired sufficient credits to satisfy his compliance obligations through one or more payments made in accordance with the terms of the general permit.

B. Until such time as the Board finds that no credits are reasonably available in an individual tributary, the general permit shall provide for the acquisition of nitrogen and phosphorus credits through payments into the Virginia Water Quality Improvement Fund in accordance with subdivision A 2. Such payments shall be promptly applied to achieve equivalent point or nonpoint source reductions in the same tributary beyond those reductions already required by or funded under federal or state law, or the Virginia tributaries strategies plans. The general permit shall base the cost of each nitrogen or phosphorus credit on the average cost of reducing one pound of nitrogen or phosphorus from Virginia publicly owned wastewater treatment facilities for each credit acquired. Upon each reissuance of the general permit, the Board may adjust the cost of each nitrogen and phosphorus credit based on (i) the current average cost of reducing a pound of nitrogen or phosphorus from Virginia publicly owned wastewater treatment facilities for each credit acquired and (ii) any additional incentives reasonably necessary to ensure that there is timely and continuing progress toward attaining and maintaining each tributary's combined waste load allocation.

C. On or before February 1, annually, each permittee shall either individually or through the Association file a report with the Department. The report shall identify (i) the annual mass load of total nitrogen and the annual mass load of total phosphorus discharged by each permitted facility during the previous calendar year, (ii) the delivered total nitrogen load and delivered total phosphorus load discharged by each permitted facility during the previous year, and (iii) the number of total nitrogen and total phosphorus credits for the previous calendar year to be purchased or sold by the permittee. The report shall contain the certification required by federal and state law and be signed by each permittee for each of the permittee's facilities covered by the general permit.

D. On or before April 1, annually, the Department shall prepare a report containing the annual mass load of total nitrogen and annual mass load of total phosphorus discharged by each permitted facility, the number of point source nitrogen and phosphorus credits for the previous calendar year for sale or purchase by each such facility, and to the extent there are insufficient point source credits available for exchange to provide for full compliance by every permittee, the number of credits to be purchased

pursuant to this section. Upon completion of the report, the Department shall promptly publish notice of the report and make the report available to any person requesting it.

E. On or before July 1, annually, the Department shall publish notice of all nitrogen and phosphorus credit exchanges and purchases for the previous calendar year and make all documents relating to the exchanges and purchases available to any person requesting them.