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HOUSE BILL NO. 1135

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 3, 2010)

(Patron Prior to Substitute—Delegate Morgan)

A BILL to amend and reenact §§ 62.1-44.19:14 and 62.1-44.19:15 of the Code of Virginia, relating to discharge permits for small treatment facilities.

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.19:14 and 62.1-44.19:15 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.19:14. Watershed general permit for nutrients.

A. By January 1, 2006, or as soon thereafter as possible, the Board shall issue a Watershed General Virginia Pollutant Discharge Elimination System Permit, hereafter referred to as the general permit, authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries. Except as otherwise provided in this article, the general permit shall control in lieu of technology-based, water quality-based, and best professional judgment, interim or final effluent limitations for total nitrogen and total phosphorus in individual Virginia Pollutant Discharge Elimination System permits for facilities covered by the general permit where the effluent limitations for total nitrogen and total phosphorus in the individual permits are based upon standards, criteria, waste load allocations, policy, or guidance established to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

B. This section shall not be construed to limit or otherwise affect the Board's authority to establish and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus in individual permits where those limitations are necessary to protect local water quality. The exchange or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local water quality-based limitations.

C. The general permit shall contain the following:

1. Waste load allocations for total nitrogen and total phosphorus for each permitted facility expressed as annual mass loads. The allocations for each permitted facility shall reflect the applicable individual water quality-based total nitrogen and total phosphorus waste load allocations. An owner or operator of two or more facilities located in the same tributary may apply for and receive an aggregated waste load allocation for total nitrogen and an aggregated waste load allocation for total phosphorus for multiple facilities reflecting the total of the water quality-based total nitrogen and total phosphorus waste load allocations established for such facilities individually;

2. A schedule requiring compliance with the combined waste load allocations for each tributary as soon as possible taking into account (i) opportunities to minimize costs to the public or facility owners by phasing in the implementation of multiple projects; (ii) the availability of required services and skilled labor; (iii) the availability of funding from the Virginia Water Quality Improvement Fund as established in § 10.1-2128, the Virginia Water Facilities Revolving Fund as established in § 62.1-225, and other financing mechanisms; (iv) water quality conditions; and (v) other relevant factors. Following receipt of the compliance plans required by subdivision C 3, the Board shall reevaluate the schedule taking into account the information in the compliance plans and the factors in this subdivision, and may modify the schedule as appropriate;

3. A requirement that within nine months after the initial effective date of the general permit, the permittees shall either individually or through the Association submit compliance plans to the Department for approval. The compliance plans shall contain, at a minimum, any capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to comply with the individual and combined waste load allocations of all the permittees in the tributary. The compliance plans may rely on the exchange of point source credits in accordance with this article, but not the acquisition of credits through payments authorized by § 62.1-44.19:18, to achieve compliance with the individual and combined waste load allocations in each tributary. The compliance plans shall be updated annually and submitted to the Department no later than February 1 of each year;

4. Such monitoring and reporting requirements as the Board deems necessary to carry out the provisions of this article;

5. A procedure that requires every owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit 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, to secure general permit coverage by filing a registration statement with the Department within a specified period after each effective date of the general permit. The procedure shall also require

any owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to discharge 40,000 gallons or more per day, or an equivalent load, directly into tidal or nontidal waters to secure general permit coverage by filing a registration statement with the Department at the time he makes application with the Department for a new discharge or expansion that is subject to an offset or technology-based requirement in § 62.1-44.19:15, and thereafter within a specified period of time after each effective date of the general permit. *The procedure shall also require any owner or operator of a facility with a discharge that is subject to an offset requirement in subdivision A 5 of § 62.1-44.19:15 to secure general permit coverage by filing a registration statement with the Department prior to commencing the discharge and thereafter within a specified period of time after each effective date of the general permit.* The general permit shall provide that any facility authorized by a Virginia Pollutant Discharge Elimination System permit and not required by this subdivision to file a registration statement shall be deemed to be covered under the general permit at the time it is issued, and shall file a registration statement with the Department when required by this section. Owners or operators of facilities that are deemed to be permitted under this section shall have no other obligation under the general permit prior to filing a registration statement and securing coverage under the general permit based upon such registration statement;

6. A procedure for efficiently modifying the lists of facilities covered by the general permit where the modification does not change or otherwise alter any waste load allocation or delivery factor adopted pursuant to the Water Quality Management Planning Regulation (9 VAC 25-270) or its successor, or an applicable total maximum daily load. The procedure shall also provide for modifying or incorporating new waste load allocations or delivery factors, including the opportunity for public notice and comment on such modifications or incorporations; and

7. Such other conditions as the Board deems necessary to carry out the provisions of this chapter and Section 402 of the federal Clean Water Act (33 U.S.C. § 1342).

D. The Board shall maintain and make available to the public a current listing, by tributary, of all permittees and permitted facilities under the general permit, together with each permitted facility's total nitrogen and total phosphorus waste load allocations, and total nitrogen and total phosphorus delivery factors.

E. Except as otherwise provided in this article, in the event that there are conflicting or duplicative conditions contained in the general permit and an individual Virginia Pollutant Discharge Elimination System permit, the conditions in the general permit shall control.

§ 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

122 nutrient removal technology at any facility authorized to discharge 100,000 gallons or more per day, or
123 an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load,
124 directly into nontidal waters.

125 5. *An owner or operator of a facility treating domestic sewage authorized by a Virginia Pollutant*
126 *Discharge Elimination System permit with a discharge greater than 1,000 gallons per day up to and*
127 *including 39,999 gallons per day that has not commenced the discharge of pollutants prior to January*
128 *1, 2011, shall demonstrate to the Department that he has acquired waste load allocations sufficient to*
129 *offset his delivered total nitrogen and delivered total phosphorus loads prior to commencing the*
130 *discharge, except when the facility is for short-term temporary use only or when treatment of domestic*
131 *sewage is not the primary purpose of the facility.*

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

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

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

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

143 c. Acquisition of allocations in accordance with the terms of the general permit or through such other
144 means as may be approved by the Department on a case-by-case basis.

145 2. The Board shall give priority to allocations acquired in accordance with subdivisions B 1 a and B
146 1 b. The Board shall approve allocations acquired in accordance with subdivision B 1 c only after the
147 owner or operator has demonstrated that he has made a good faith effort to acquire sufficient allocations
148 in accordance with subdivisions B 1 a and B 1 b and that such allocations are not reasonably available
149 taking into account timing, cost, and other relevant factors.

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

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