

11102960D

## SENATE BILL NO. 1102

Offered January 12, 2011

Prefiled January 11, 2011

A *BILL to amend and reenact § 62.1-44.19:15 of the Code of Virginia, relating to the acquisition of nutrient credits.*

Patrons—Hanger; Delegates: Bell, Richard P. and Landes

Referred to Committee on Agriculture, Conservation 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.

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

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

INTRODUCED

SB1102

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

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

66 2. The Board shall give priority to allocations acquired in accordance with subdivisions B 1 a and B  
67 1 b. The Board shall approve allocations acquired in accordance with subdivision B 1 c only after the  
68 owner or operator has demonstrated that he has made a good faith effort to acquire sufficient allocations  
69 in accordance with subdivisions B 1 a and B 1 b and that such allocations are not reasonably available  
70 taking into account timing, cost, and other relevant factors.

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

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

92 *D. The acquisition of nonpoint source nutrient allocations from animal waste-to-energy or animal*  
93 *waste reduction facilities, or the acquisition of such nutrient allocations from entities acting on behalf of*  
94 *such facilities pursuant subdivision B 1 a, B 1 b, or B 1 c, shall not be subject to a two-for-one trading*  
95 *ratio if the best management practice being used to generate the nonpoint source nutrient allocation is a*  
96 *point source nutrient removal technology such as an animal waste gasifier in which lab analysis of the*  
97 *animal waste reveals the concentration of nutrients in the animal waste being fed into the gasifier, and*  
98 *the fate of the nutrients during the animal waste gasification process is known and documented using*  
99 *studies such as air emissions tests and ash analyses.*