

2015 SESSION

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1 **HOUSE BILL NO. 1536**

2 Offered January 14, 2015

3 Prefiled January 6, 2015

4 A BILL to amend and reenact §§ 10.1-2117, 10.1-2128, 10.1-2129, 10.1-2131, 10.1-2132, 62.1-44.15:35,
5 and 62.1-44.19:13 of the Code of Virginia, relating to removing references to the tributary strategy
6 plans for cleaning up the Chesapeake Bay and its tributaries in the Water Quality Improvement Act.

7 Patron—Bulova

8 Referred to Committee on Agriculture, Chesapeake and Natural Resources

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

10 1. That §§ 10.1-2117, 10.1-2128, 10.1-2129, 10.1-2131, 10.1-2132, 62.1-44.15:35, and 62.1-44.19:13 of
11 the Code of Virginia are amended and reenacted as follows:

12 § 10.1-2117. Definitions.

13 As used in this chapter, unless the context requires a different meaning:

14 "Biological nutrient removal technology" means technology that will typically achieve at least an 8
15 mg/L total nitrogen concentration or at least a 1 mg/L total phosphorus concentration in effluent
16 discharges.

17 "Chesapeake Bay Agreement" means the Chesapeake Bay Agreement of 2000 and any amendments
18 thereto.

19 "Eligible nonsignificant discharger" means any publicly owned treatment works that is not a
20 significant discharger but due to expansion or new construction is subject to a technology-based standard
21 under § 62.1-44.19:15 or 62.1-44.19:16.

22 "Fund" means the Virginia Water Quality Improvement Fund established by Article 4 (§ 10.1-2128 et
23 seq.) of this chapter.

24 "Individual" means any corporation, foundation, association or partnership or one or more natural
25 persons.

26 "Institutions of higher education" means any educational institution meeting the requirements of
27 § 60.2-220.

28 "Local government" means any county, city, town, municipal corporation, authority, district,
29 commission or political subdivision of the Commonwealth.

30 "Nonpoint source pollution" means pollution of state waters washed from the land surface in a
31 diffuse manner and not resulting from a discernible, defined or discrete conveyance.

32 "Nutrient removal technology" means state-of-the-art nutrient removal technology, biological nutrient
33 removal technology, or other nutrient removal technology.

34 "Point source pollution" means pollution of state waters resulting from any discernible, defined or
35 discrete conveyances.

36 "Publicly owned treatment works" means a publicly owned sewage collection system consisting of
37 pipelines or conduits, pumping stations and force mains, and all other construction, devices, and
38 appliances appurtenant thereto, or any equipment, plant, treatment works, structure, machinery,
39 apparatus, interest in land, or any combination of these, not including an onsite sewage system, that is
40 used, operated, acquired, or constructed for the storage, collection, treatment, neutralization, stabilization,
41 reduction, recycling, reclamation, separation, or disposal of wastewater, or for the final disposal of
42 residues resulting from the treatment of sewage, including but not limited to: treatment or disposal
43 plants; outfall sewers, interceptor sewers, and collector sewers; pumping and ventilating stations,
44 facilities, and works; and other real or personal property and appurtenances incident to their
45 development, use, or operation.

46 "Reasonable sewer costs" means the amount expended per household for sewer service in relation to
47 the median household income of the service area as determined by guidelines developed and approved
48 by the State Water Control Board for use with the Virginia Water Facilities Revolving Fund established
49 pursuant to Chapter 22 (§ 62.1-224 et seq.) of Title 62.1.

50 "Significant discharger" means (i) a publicly owned treatment works discharging to the Chesapeake
51 Bay watershed with a design capacity of 0.5 million gallons per day or greater, (ii) a publicly owned
52 treatment works discharging to the Chesapeake Bay watershed east of the fall line with a design capacity
53 of 0.1 million gallons per day or greater, (iii) a planned or newly expanding publicly owned treatment
54 works discharging to the Chesapeake Bay watershed, which is expected to be in operation by 2010 with
55 a permitted design of 0.5 million gallons per day or greater, or (iv) a planned or newly expanding
56 publicly owned treatment works discharging to the Chesapeake Bay watershed east of the fall line with
57 a permitted design of 0.5 million gallons per day or greater, or (iv) a planned or newly expanding
58 publicly owned treatment works discharging to the Chesapeake Bay watershed east of the fall line with

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59 a design capacity of 0.1 million gallons per day or greater, which is expected to be in operation by
60 2010.

61 "State-of-the-art nutrient removal technology" means technology that will achieve at least a 3 mg/L
62 total nitrogen concentration or at least a 0.3 mg/L total phosphorus concentration in effluent discharges.

63 "State waters" means all waters on the surface or under the ground, wholly or partially within or
64 bordering the Commonwealth or within its jurisdictions.

65 "Tributary strategy plans" means plans that are developed by the Secretary of Natural Resources
66 pursuant to the provisions of the Chesapeake Bay Agreement for the tidal tributaries of the Chesapeake
67 Bay and the tidal creeks and embayments of the western side of the Eastern Shore of Virginia. This
68 term shall include any amendments to the tributary strategy plans initially developed by the Secretary of
69 Natural Resources pursuant to the Chesapeake Bay Agreement.

70 "Water Quality Improvement Grants" means grants available from the Fund for projects of local
71 governments, institutions of higher education, and individuals (i) to achieve nutrient reduction goals in
72 tributary strategy plans or applicable regulatory requirements regulations, permits, or the Chesapeake
73 Bay TMDL Watershed Implementation Plan or (ii) to achieve other water quality restoration, protection
74 or enhancement benefits.

75 **§ 10.1-2128. Virginia Water Quality Improvement Fund established; purposes.**

76 A. There is hereby established in the state treasury a special permanent, nonreverting fund, to be
77 known as the "Virginia Water Quality Improvement Fund." The Fund shall be established on the books
78 of the Comptroller. The Fund shall consist of sums appropriated to it by the General Assembly which
79 shall include, unless otherwise provided in the general appropriation act, 10 percent of the annual
80 general fund revenue collections that are in excess of the official estimates in the general appropriation
81 act and 10 percent of any unrestricted and uncommitted general fund balance at the close of each fiscal
82 year whose reappropriation is not required in the general appropriation act. The Fund shall also consist
83 of such other sums as may be made available to it from any other source, public or private, and shall
84 include any penalties or damages collected under this article, federal grants solicited and received for the
85 specific purposes of the Fund, and all interest and income from investment of the Fund. Any sums
86 remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the
87 general fund but shall remain in the Fund. All moneys designated for the Fund shall be paid into the
88 state treasury and credited to the Fund. Moneys in the Fund shall be used solely for Water Quality
89 Improvement Grants. Expenditures and disbursements from the Fund shall be made by the State
90 Treasurer on warrants issued by the Comptroller upon the written request of the Director of the
91 Department of Environmental Quality or the Director of the Department of Conservation and Recreation
92 as provided in this chapter.

93 B. Except as otherwise provided under this article, the purpose of the Fund is to provide Water
94 Quality Improvement Grants to local governments, soil and water conservation districts, state agencies,
95 institutions of higher education and individuals for point and nonpoint source pollution prevention,
96 reduction and control programs and efforts undertaken in accordance with the provisions of this chapter.
97 The Fund shall not be used for agency operating expenses or for purposes of replacing or otherwise
98 reducing any general, nongeneral, or special funds allocated or appropriated to any state agency;
99 however, nothing in this section shall be construed to prevent the award of a Water Quality
100 Improvement Grant to a local government in connection with point or nonpoint pollution prevention,
101 reduction and control programs or efforts undertaken on land owned by the Commonwealth and leased
102 to the local government. In keeping with the purpose for which the Fund is created, it shall be the
103 policy of the General Assembly to provide annually its share of financial support to qualifying
104 applicants for grants in order to fulfill the Commonwealth's responsibilities under Article XI of the
105 Constitution of Virginia.

106 C. For the fiscal year beginning July 1, 2005, \$50 million shall be appropriated from the general
107 fund and deposited into the Fund. Except as otherwise provided under this article, such appropriation
108 and any amounts appropriated to the Fund in subsequent years in addition to any amounts deposited to
109 the Fund pursuant to the provisions of subsection A shall be used solely to finance the costs of design
110 and installation of nutrient removal technology at publicly owned treatment works designated as
111 significant dischargers or eligible nonsignificant dischargers for compliance with the effluent limitations
112 for total nitrogen and total phosphorus as required by the tributary strategy plans Chesapeake Bay
113 TMDL Watershed Implementation Plan or applicable regulatory or permit requirements. Notwithstanding
114 the provisions of this section, the Governor and General Assembly may, at any time, provide additional
115 funding for nonpoint source pollution reduction activities through the Fund in excess of the deposit
116 required under subsection A.

117 At such time as grant agreements specified in § 10.1-2130 have been signed by every significant
118 discharger and eligible nonsignificant discharger and available funds are sufficient to implement the
119 provisions of such grant agreements, the House Committee on Agriculture, Chesapeake and Natural
120 Resources, the House Committee on Appropriations, the Senate Committee on Agriculture, Conservation

121 and Natural Resources, and the Senate Committee on Finance shall review the financial assistance
122 provided under this section and determine (i) whether such deposits should continue to be made, (ii) the
123 size of the deposit to be made, (iii) the programs and activities that should be financed by such deposits
124 in the future, and (iv) whether the provisions of this section should be extended.

125 **§ 10.1-2129. Agency coordination; conditions of grants.**

126 A. If, in any fiscal year beginning on or after July 1, 2005, there are appropriations to the Fund in
127 addition to those made pursuant to subsection A of § 10.1-2128, the Secretary of Natural Resources shall
128 distribute those moneys in the Fund provided from the 10 percent of the annual general fund revenue
129 collections that are in excess of the official estimates in the general appropriation act, and the 10 percent
130 of any unrestricted and uncommitted general fund balance at the close of each fiscal year whose
131 reappropriation is not required in the general appropriation act, as follows:

132 1. Seventy percent of the moneys shall be distributed to the Department of Conservation and
133 Recreation and shall be administered by it for the sole purpose of implementing projects or best
134 management practices that reduce nitrogen and phosphorus nonpoint source pollution, with a priority
135 given to agricultural best management practices. In no single year shall more than 60 percent of the
136 moneys be used for projects or practices exclusively within the Chesapeake Bay watershed; and

137 2. Thirty percent of the moneys shall be distributed to the Department of Environmental Quality,
138 which shall use such moneys for making grants for the sole purpose of designing and installing nutrient
139 removal technologies for publicly owned treatment works designated as significant dischargers or
140 eligible nonsignificant dischargers. The moneys shall also be available for grants when the design and
141 installation of nutrient removal technology utilizes the Public-Private Education Facilities and
142 Infrastructure Act (§ 56-575.1 et seq.).

143 3. Except as otherwise provided in the Appropriation Act, in any fiscal year when moneys are not
144 appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128, or when moneys
145 appropriated to the Fund in addition to those specified in subsection A of § 10.1-2128 are less than 40
146 percent of those specified in subsection A of § 10.1-2128, the Secretary of Natural Resources, in
147 consultation with the Secretary of Agriculture and Forestry, the State Forester, the Commissioner of
148 Agriculture and Consumer Services, and the Directors of the Departments of Environmental Quality and
149 Conservation and Recreation, and with the advice and guidance of the Board of Conservation and
150 Recreation, the Virginia Soil and Water Conservation Board, and the State Water Control Board, and
151 following a public comment period of at least 30 days and a public hearing, shall allocate those moneys
152 deposited in the Fund, but excluding any moneys deposited into the Virginia Natural Resources
153 Commitment Fund established pursuant to § 10.1-2128.1, between point and nonpoint sources, both of
154 which shall receive moneys in each such year.

155 B. 1. Except as may otherwise be specified in the general appropriation act, the Secretary of Natural
156 Resources, in consultation with the Secretary of Agriculture and Forestry, the State Forester, the
157 Commissioner of Agriculture and Consumer Services, the State Health Commissioner, and the Directors
158 of the Departments of Environmental Quality and Conservation and Recreation, and with the advice and
159 guidance of the Board of Conservation and Recreation, the Virginia Soil and Water Conservation Board,
160 and the State Water Control Board, shall develop written guidelines that (i) specify eligibility
161 requirements; (ii) govern the application for and the distribution and conditions of Water Quality
162 Improvement Grants; (iii) list criteria for prioritizing funding requests; and (iv) define criteria and
163 financial incentives for water reuse.

164 2. In developing the guidelines, the Secretary shall evaluate and consider, in addition to such other
165 factors as may be appropriate to most effectively restore, protect and improve the quality of state waters:
166 (i) specific practices and programs proposed in any tributary strategy plan the Chesapeake Bay TMDL
167 Watershed Implementation Plan, and the associated effectiveness and cost per pound of nutrients
168 removed; (ii) water quality impairment or degradation caused by different types of nutrients released in
169 different locations from different sources; and (iii) environmental benchmarks and indicators for
170 achieving improved water quality. The process for development of guidelines pursuant to this subsection
171 shall, at a minimum, include (a) use of an advisory committee composed of interested parties; (b) a
172 60-day public comment period on draft guidelines; (c) written responses to all comments received; and
173 (d) notice of the availability of draft guidelines and final guidelines to all who request such notice.

174 3. In addition to those the Secretary deems advisable to most effectively restore, protect and improve
175 the quality of state waters, the criteria for prioritizing funding requests shall include: (i) the pounds of
176 total nitrogen and the pounds of total phosphorus reduced by the project; (ii) whether the location of the
177 water quality restoration, protection or improvement project or program is within a watershed or
178 subwatershed with documented water nutrient loading problems or adopted nutrient reduction goals; (iii)
179 documented water quality impairment; and (iv) the availability of other funding mechanisms.
180 Notwithstanding the provisions of subsection E of § 10.1-2131, the Director of the Department of
181 Environmental Quality may approve a local government point source grant application request for any

182 single project that exceeds the authorized grant amount outlined in subsection E of § 10.1-2131.
183 Whenever a local government applies for a grant that exceeds the authorized grant amount outlined in
184 this chapter or when there is no stated limitation on the amount of the grant for which an application is
185 made, the Directors and the Secretary shall consider the comparative revenue capacity, revenue efforts
186 and fiscal stress as reported by the Commission on Local Government. The development or
187 implementation of cooperative programs developed pursuant to subsection B of § 10.1-2127 shall be
188 given a high priority in the distribution of Virginia Water Quality Improvement Grants from the moneys
189 allocated to nonpoint source pollution.

190 **§ 10.1-2131. Point source pollution funding; conditions for approval.**

191 A. The Department of Environmental Quality shall be the lead state agency for determining the
192 appropriateness of any grant related to point source pollution to be made from the Fund to restore,
193 protect or improve state water quality.

194 B. The Director of the Department of Environmental Quality shall, subject to available funds and in
195 coordination with the Director of the Department of Conservation and Recreation, direct the State
196 Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established
197 pursuant to § 10.1-2129. The Director of the Department of Environmental Quality shall enter into grant
198 agreements with all facilities designated as significant dischargers or eligible nonsignificant dischargers
199 that apply for grants; however, all such grant agreements shall contain provisions that payments
200 thereunder are subject to the availability of funds.

201 C. Notwithstanding the priority provisions of § 10.1-2129, the Director of the Department of
202 Environmental Quality shall not authorize the distribution of grants from the Fund for purposes other
203 than financing the cost of design and installation of nutrient removal technology at publicly owned
204 treatment works *outside the Chesapeake Bay watershed* until such time as ~~all tributary strategy plans are~~
205 ~~developed and implemented nutrient reduction requirements of regulations, permits, or the Chesapeake~~
206 ~~Bay TMDL Watershed Implementation Plan are satisfied~~, unless he finds that there exists in the Fund
207 sufficient funds for substantial and continuing progress in implementation of the ~~tributary strategy plans~~
208 ~~requirements of regulations, permits, or the Chesapeake Bay TMDL Watershed Implementation Plan~~
209 ~~within the Chesapeake Bay watershed~~. In addition to the provisions of § 10.1-2130, all grant agreements
210 related to nutrients shall include: (i) numerical technology-based effluent concentration limitations on
211 nutrient discharges to state waters based upon the technology installed by the facility; (ii) enforceable
212 provisions related to the maintenance of the numerical concentrations that will allow for exceedences of
213 0.8 mg/L for total nitrogen or no more than 10 percent, whichever is greater, for exceedences of 0.1
214 mg/L for total phosphorus or no more than 10%, and for exceedences caused by extraordinary
215 conditions; and (iii) recognition of the authority of the Commonwealth to make the Virginia Water
216 Facilities Revolving Fund (§ 62.1-224 et seq.) available to local governments to fund their share of the
217 cost of designing and installing nutrient removal technology based on financial need and subject to
218 availability of revolving loan funds, priority ranking and revolving loan distribution criteria. If, pursuant
219 to § 10.1-1187.6, the State Water Control Board approves an alternative compliance method to
220 technology-based concentration limitations in Virginia Pollutant Discharge Elimination System permits,
221 the concentration limitations of the grant agreement shall be suspended subject to the terms of such
222 approval. The cost of the design and installation of nutrient removal technology at publicly owned
223 treatment works meeting the nutrient reduction goal in an applicable tributary strategy plan or an
224 applicable regulatory requirement requirements in regulations, permits, or the Chesapeake Bay TMDL
225 Watershed Implementation Plan and incurred prior to the execution of a grant agreement is eligible for
226 reimbursement from the Fund provided the grant is made pursuant to an executed agreement consistent
227 with the provisions of this chapter.

228 Subsequent to the implementation of the ~~tributary strategy plans any applicable regulations, permits,~~
229 ~~or the Chesapeake Bay TMDL Watershed Implementation Plan~~, the Director may authorize
230 disbursements from the Fund for any water quality restoration, protection and improvements related to
231 point source pollution that are clearly demonstrated as likely to achieve measurable and specific water
232 quality improvements, including, but not limited to, cost effective technologies to reduce nutrient loads.
233 Notwithstanding the previous provisions of this subsection, the Director may, at any time, authorize
234 grants, including grants to institutions of higher education, for technical assistance related to nutrient
235 reduction.

236 D. The grant percentage provided for financing the costs of the design and installation of nutrient
237 removal technology at publicly owned treatment works shall be based upon the financial need of the
238 community as determined by comparing the annual sewer charges expended within the service area to
239 the reasonable sewer cost established for the community.

240 E. Grants shall be awarded in the following manner:

241 1. In communities for which the ratio of annual sewer charges to reasonable sewer cost is less than
242 0.30, the Director of the Department of Environmental Quality shall authorize grants in the amount of
243 35 percent of the costs of the design and installation of nutrient removal technology;

244 2. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or
245 greater than 0.30 and less than 0.50, the Director shall authorize grants in the amount of 45 percent of
246 the costs of the design and installation of nutrient removal technology;

247 3. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or
248 greater than 0.50 and less than 0.80, the Director shall authorize grants in the amount of 60 percent of
249 the costs of design and installation of nutrient removal technology; and

250 4. In communities for which the ratio of annual sewer charges to reasonable sewer cost is equal to or
251 greater than 0.80, the Director shall authorize grants in the amount of 75 percent of the costs of the
252 design and installation of nutrient removal technology.

§ 10.1-2132. Nonpoint source pollution funding; conditions for approval.

253 A. The Department of Conservation and Recreation shall be the lead state agency for determining the
254 appropriateness of any grant related to nonpoint source pollution to be made from the Fund to restore,
255 protect and improve the quality of state waters.

256 B. The Director of the Department of Conservation and Recreation shall, subject to available funds
257 and in coordination with the Director of the Department of Environmental Quality, direct the State
258 Treasurer to make Water Quality Improvement Grants in accordance with the guidelines established
259 pursuant to § 10.1-2129. The Director shall manage the allocation of grants from the Fund to ensure the
260 full funding of executed grant agreements.

261 C. Grant funding may be made available to local governments, soil and water conservation districts,
262 institutions of higher education and individuals who propose specific initiatives that are clearly
263 demonstrated as likely to achieve reductions in nonpoint source pollution, including, but not limited to,
264 excess nutrients and suspended solids, to improve the quality of state waters. Such projects may include,
265 but are in no way limited to, the acquisition of conservation easements related to the protection of water
266 quality and stream buffers; conservation planning and design assistance to develop nutrient management
267 plans for agricultural operations; instructional education directly associated with the implementation or
268 maintenance of a specific nonpoint source pollution reduction initiative; the replacement or modification
269 of residential onsite sewage systems to include nitrogen removal capabilities; implementation of
270 cost-effective nutrient reduction practices; and reimbursement to local governments for tax credits and
271 other kinds of authorized local tax relief that provides incentives for water quality improvement. The
272 Director shall give priority consideration to the distribution of grants from the Fund for the purposes of
273 implementing tributary strategy plans any applicable regulations, permits, or the Chesapeake Bay TMDL
274 Watershed Implementation Plan, with a priority given to agricultural practices. In no single year shall
275 more than 60 percent of the moneys be used for projects or practices exclusively within the Chesapeake
276 Bay watershed.

277 D. The Director of the Department of Conservation and Recreation shall manage the allocation of
278 Water Quality Improvement Grants from the Virginia Natural Resources Commitment Fund established
279 under § 10.1-2128.1.

§ 62.1-44.15:35. Nutrient credit use and additional offsite options for construction activities.

280 A. As used in this section:

281 "Nutrient credit" or "credit" means a nutrient credit certified pursuant to Article 4.02 (§ 62.1-44.19:12
282 et seq.).

283 "TrIBUTARY", within the Chesapeake Bay watershed, has the same meaning as in § 62.1-44.19:13. For
284 areas outside of the Chesapeake Bay Watershed watershed, "tributary" includes the following
285 watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell;
286 New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

287 "Virginia Stormwater Management Program Authority" or "VSMP authority" has the same meaning
288 as in § 62.1-44.15:24 and includes, until July 1, 2014, any locality that has adopted a local stormwater
289 management program.

290 B. A VSMP authority is authorized to allow compliance with stormwater nonpoint nutrient runoff
291 water quality criteria established pursuant to § 62.1-44.15:28, in whole or in part, through the use of the
292 applicant's acquisition of nutrient credits in the same tributary.

293 C. No applicant shall use nutrient credits to address water quantity control requirements. No applicant
294 shall use nutrient credits or other offsite options in contravention of local water quality-based limitations
295 (i) determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted pursuant to § 62.1-44.15:33 or
296 other applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated
297 adverse nutrient impacts, or (iv) as otherwise may be established or approved by the Board. Where such
298 a limitation exists, offsite options may be used provided that such options do not preclude or impair
299 compliance with the local limitation.

300 D. A VSMP authority shall allow offsite options in accordance with subsection I when:

301 1. Less than five acres of land will be disturbed;

302 2. The postconstruction phosphorous control requirement is less than 10 pounds per year; or

305 3. The state permit applicant demonstrates to the satisfaction of the VSMP authority that (i)
306 alternative site designs have been considered that may accommodate onsite best management practices,
307 (ii) onsite best management practices have been considered in alternative site designs to the maximum
308 extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) full
309 compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably
310 be met onsite. For purposes of this subdivision, if an applicant demonstrates onsite control of at least 75
311 percent of the required phosphorous nutrient reductions, the applicant shall be deemed to have met the
312 requirements of clauses (i) through (iv).

313 E. Documentation of the applicant's acquisition of nutrient credits shall be provided to the VSMP
314 authority and the Department in a certification from the credit provider documenting the number of
315 phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the
316 credit-generating entity. Until the effective date of regulations establishing application fees in accordance
317 with § 62.1-44.19:20, the credit provider shall pay the Department a water quality enhancement fee
318 equal to six percent of the amount paid by the applicant for the credits. Such fee shall be deposited into
319 the Virginia Stormwater Management Fund established by § 62.1-44.15:29.

320 F. Nutrient credits used pursuant to subsection B shall be generated in the same or adjacent
321 eight-digit hydrologic unit code as defined by the United States Geological Survey as the permitted site
322 except as otherwise limited in subsection C. Nutrient credits outside the same or adjacent eight-digit
323 hydrologic unit code may only be used if it is determined by the VSMP authority that no credits are
324 available within the same or adjacent eight-digit hydrologic unit code when the VSMP authority accepts
325 the final site design. In such cases, and subject to other limitations imposed in this section, credits
326 available within the same tributary may be used. In no case shall credits from another tributary be used.

327 G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality
328 criteria being obtained through nutrient credits, the applicant shall (i) comply with a 1:1 ratio of the
329 nutrient credits to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement
330 being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02
331 (§ 62.1-44.19:12 et seq.).

332 H. No VSMP authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient
333 runoff compliance requirements unless offsite options have been considered and found not available.

334 I. The VSMP authority shall require that nutrient credits and other offsite options approved by the
335 Department or applicable state board, including locality pollutant loading pro rata share programs
336 established pursuant to § 15.2-2243, achieve the necessary nutrient reductions prior to the
337 commencement of the applicant's land-disturbing activity. A pollutant loading pro rata share program
338 established by a locality pursuant to § 15.2-2243 and approved by the Department or applicable state
339 board prior to January 1, 2011, including those that may achieve nutrient reductions after the
340 commencement of the land-disturbing activity, may continue to operate in the approved manner for a
341 transition period ending July 1, 2014. The applicant shall have the right to select between the use of
342 nutrient credits or other offsite options, except during the transition period in those localities to which
343 the transition period applies. The locality may use funds collected for nutrient reductions pursuant to a
344 locality pollutant loading pro rata share program under § 15.2-2243 for nutrient reductions in the same
345 tributary within the same locality as the land-disturbing activity or for the acquisition of nutrient credits.
346 In the case of a phased project, the applicant may acquire or achieve the offsite nutrient reductions prior
347 to the commencement of each phase of the land-disturbing activity in an amount sufficient for each such
348 phase.

349 J. Nutrient reductions obtained through nutrient credits shall be credited toward compliance with any
350 nutrient allocation assigned to a municipal separate storm sewer system in a Virginia Stormwater
351 Management Program Permit or Total Maximum Daily Load applicable to the location where the
352 activity for which the nutrient credits are used takes place. If the activity for which the nutrient credits
353 are used does not discharge to a municipal separate storm sewer system, the nutrient reductions shall be
354 credited toward compliance with the applicable nutrient allocation.

355 K. A VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for
356 existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of
357 the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing
358 onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable
359 maintenance agreements or requirements and the use of nutrient credits will account for the deficiency.
360 Upon determination by the VSMP authority that the conditions established by clause (i) or (ii) have
361 been met, the party responsible for maintenance shall be released from maintenance obligations related
362 to the onsite phosphorous controls for which the nutrient credits are substituted.

363 L. To the extent available, with the consent of the applicant, the VSMP authority, the Board or the
364 Department may include the use of nutrient credits or other offsite measures in resolving enforcement
365 actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance
366 and (ii) permanent nutrient control deficiencies.

367 M. This section shall not be construed as limiting the authority established under § 15.2-2243;
368 however, under any pollutant loading pro rata share program established thereunder, the subdivider or
369 developer shall be given appropriate credit for nutrient reductions achieved through nutrient credits or
370 other offsite options.

371 N. In order to properly account for allowed nonpoint nutrient offsite reductions, an applicant shall
372 report to the Department, in accordance with Department procedures, information regarding all offsite
373 reductions that have been authorized to meet stormwater postdevelopment nonpoint nutrient runoff
374 compliance requirements.

375 O. An applicant or a permittee found to be in noncompliance with the requirements of this section
376 shall be subject to the enforcement and penalty provisions of this article.

377 **§ 62.1-44.19:13. Definitions.**

378 As used in this article, unless the context requires a different meaning:

379 "Annual mass load of total nitrogen" (expressed in pounds per year) means the daily total nitrogen
380 concentration (expressed as mg/L to the nearest 0.01 mg/L) multiplied by the flow volume of effluent
381 discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD), multiplied by 8.34
382 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then totaled for
383 the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the calendar year
384 to convert to pounds per year (lbs/yr) units.

385 "Annual mass load of total phosphorus" (expressed in pounds per year) means the daily total
386 phosphorus concentration (expressed as mg/L to the nearest 0.01mg/L) multiplied by the flow volume of
387 effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01 MGD) multiplied
388 by 8.34 and rounded to the nearest whole number to convert to pounds per day (lbs/day) units, then
389 totaled for the calendar month to convert to pounds per month (lbs/mo) units, and then totaled for the
390 calendar year to convert to pounds per year (lbs/yr) units.

391 "Association" means the Virginia Nutrient Credit Exchange Association authorized by this article.

392 "Attenuation" means the rate at which nutrients are reduced through natural processes during
393 transport in water.

394 "Best management practice," "practice," or "BMP" means a structural practice, nonstructural practice,
395 or other management practice used to prevent or reduce nutrient loads associated with stormwater from
396 reaching surface waters or the adverse effects thereof.

397 "Biological nutrient removal technology" means (i) technology that will achieve an annual average
398 total nitrogen effluent concentration of eight milligrams per liter and an annual average total phosphorus
399 effluent concentration of one milligram per liter, or (ii) equivalent reductions in loads of total nitrogen
400 and total phosphorus through the recycle or reuse of wastewater as determined by the Department.

401 "Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point source
402 that is adjusted by the delivery factor for that point source.

403 "Delivered total phosphorus load" means the discharged mass load of total phosphorus from a point
404 source that is adjusted by the delivery factor for that point source.

405 "Delivery factor" means an estimate of the number of pounds of total nitrogen or total phosphorus
406 delivered to tidal waters for every pound discharged from a permitted facility, as determined by the
407 specific geographic location of the permitted facility, to account for attenuation that occurs during
408 riverine transport between the permitted facility and tidal waters. Delivery factors shall be calculated
409 using the Chesapeake Bay Program watershed model.

410 "Department" means the Department of Environmental Quality.

411 "Equivalent load" means 2,300 pounds per year of total nitrogen and 300 pounds per year of total
412 phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total nitrogen and 760
413 pounds per year of total phosphorus at a flow volume of 100,000 gallons per day; and 28,500 pounds
414 per year of total nitrogen and 3,800 pounds per year of total phosphorus at a flow volume of 500,000
415 gallons per day.

416 "Facility" means a point source discharging or proposing to discharge total nitrogen or total
417 phosphorus to the Chesapeake Bay or its tributaries. This term does not include confined animal feeding
418 operations, discharges of stormwater, return flows from irrigated agriculture, or vessels.

419 "General permit" means the general permit authorized by this article.

420 "MS4" means a municipal separate storm sewer system.

421 "Nutrient credit" or "credit" means a nutrient reduction that is certified pursuant to this article and
422 expressed in pounds of phosphorus or nitrogen either (i) delivered to tidal waters when the credit is
423 generated within the Chesapeake Bay Watershed or (ii) as otherwise specified when generated in the
424 Southern Rivers watersheds. "Nutrient credit" does not include point source nitrogen credits or point
425 source phosphorus credits as defined in this section.

426 "Nutrient credit-generating entity" means an entity that generates nonpoint source nutrient credits.

427 "Permitted facility" means a facility authorized by the general permit to discharge total nitrogen or

428 total phosphorus. For the sole purpose of generating point source nitrogen credits or point source
429 phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility
430 operated by the District of Columbia Water and Sewer Authority.

431 "Permittee" means a person authorized by the general permit to discharge total nitrogen or total
432 phosphorus.

433 "Point source nitrogen credit" means the difference between (i) the waste load allocation for a
434 permitted facility specified as an annual mass load of total nitrogen, and (ii) the monitored annual mass
435 load of total nitrogen discharged by that facility, where clause (ii) is less than clause (i), and where the
436 difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered
437 total nitrogen load.

438 "Point source phosphorus credit" means the difference between (i) the waste load allocation for a
439 permitted facility specified as an annual mass load of total phosphorus, and (ii) the monitored annual mass
440 load of total phosphorus discharged by that facility, where clause (ii) is less than clause (i), and
441 where the difference is adjusted by the applicable delivery factor and expressed as pounds per year of delivered
442 total phosphorus load.

443 "State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual
444 average total nitrogen effluent concentration of three milligrams per liter and an annual average total
445 phosphorus effluent concentration of 0.3 milligrams per liter, or (ii) equivalent load reductions in total
446 nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the Department.

447 "Tributaries" means those river basins ~~for which separate tributary strategies were prepared pursuant~~
448 to § 2.2-218 *listed in the Chesapeake Bay TMDL* and includes the Potomac, Rappahannock, York, and
449 James River Basins, and the Eastern ~~Coastal Basin Shore~~, which encompasses the creeks and rivers of
450 the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

451 "Waste load allocation" means (i) the water quality-based annual mass load of total nitrogen or
452 annual mass load of total phosphorus allocated to individual facilities pursuant to the Water Quality
453 Management Planning Regulation (9 VAC 25-720) or its successor, or permitted capacity in the case of
454 nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass
455 load of total phosphorus acquired pursuant to § 62.1-44.19:15 for new or expanded facilities; or (iii)
456 applicable total nitrogen or total phosphorus waste load allocations under the Chesapeake Bay total
457 maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the
458 Chesapeake Bay or its tidal tributaries.