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HOUSE BILL NO. 438

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on January 27, 2016)

(Patron Prior to Substitute—Delegate Bulova)

A BILL to amend the Code of Virginia by adding a section numbered 62.1-44.19:21.1, relating to sediment reduction credits for MS4s.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 62.1-44.19:21.1 as follows:

§ 62.1-44.19:21.1. Sediment credit use by regulated MS4s.

A. Subject to the conditions and limitations of subsections B, C, and D, an MS4 permittee may acquire and use sediment credits for purposes of compliance with any waste load allocations established by total maximum daily loads for the Chesapeake Bay or its tidal tributaries applied in an MS4 permit issued pursuant to § 62.1-44.15:25, where such credit use is part of an integrated compliance plan for the MS4 permittee to address such nutrient and sediment total maximum daily loads.

B. Such method of compliance may be approved by the Department following review of an integrated compliance plan submitted by the permittee that includes the use of sediment credits. The permittee may use such credits for compliance purposes only if (i) the credits are generated and applied for purposes of compliance for the same calendar year; (ii) the credits are acquired no later than June 1 immediately following the calendar year to which the credits are applied; (iii) no later than June 1 immediately following the calendar year to which credits are applied, the permittee certifies on a form supplied by the Department that he has acquired sufficient credits to satisfy his compliance obligations; (iv) the credits are generated in the same tributary; (v) the sediment credits are not associated with phosphorus credits used for compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 62.1-44.15:28; and (vi) the credits are derived from (a) implementation of best management practices in a defined area outside of an MS4 service area, in which case the necessary additional reductions as credit or (b) a point source waste load allocation established by the Chesapeake Bay total maximum daily load, in which case the credit is the difference between the waste load allocation specified as an annual mass load and any lower monitored annual mass load that is discharged as certified on a form supplied by the Department.

C. This section shall not be construed to limit or otherwise affect the authority of the Board to establish and enforce more stringent water quality-based effluent limitations in 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.

D. The Board may adopt regulations for the purpose of establishing procedures for the certification of nonpoint source sediment credits used pursuant to subsection B. The Board's administration of this section and its adoption of any such regulations shall be consistent wherever appropriate with the standards and procedures established pursuant to § 62.1-44.19:20 for certification of nonpoint source nutrient credits, including, without limitation, the opportunity for public notification, the retirement of credits, sediment baseline attainment as a condition on generation and use of nonpoint source sediment credits, financial assurance requirements, and requirements for inspection or auditing by the Department.

E. For the purposes of this section, "sediment credit" means a sediment or total suspended solids reduction that is expressed in pounds delivered to tidal waters within the Chesapeake Bay Watershed.