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SENATE BILL NO. 314

Offered January 13, 2016

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A BILL to amend and reenact §§ 62.1-44.19:15 and 62.1-44.19:17 of the Code of Virginia, relating to the Chesapeake Bay Watershed Nutrient Credit Exchange Program.

Patrons—Dance, Chase and Sturtevant

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 and 62.1-44.19:17 of the Code of Virginia are 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 or point source nitrogen or point source phosphorus credits from one or more permitted facilities in the same tributary;

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b. Acquisition of credits certified by the Board pursuant to § 62.1-44.19:20. Such best management practices shall achieve reductions beyond those already required by or funded under federal or state law, or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan, and shall be installed in the same tributary in which the new or expanded facility is located and included as conditions of the facility's individual Virginia Pollutant Discharge Elimination System permit;

c. Acquisition of allocations purchased through the Nutrient Offset Fund established pursuant to § 10.1-2128.2; or

d. Acquisition of allocations through such other means as may be approved by the Department on a case-by-case basis.

e. Acquisition of allocations through the implementation of best management practices on lands owned or controlled by, or under contractual obligation with, the new or expanded facility that achieve reductions greater than those currently required by or funded under federal or state law, or the Virginia Chesapeake Bay TMDL Watershed Implementation Plan, subject to the approval by the Board. Any such best management practices shall be implemented on lands within the same tributary as the new or expanded facility, and any credits assigned by the Board based on those practices shall be subject to adjustment based on the relevant delivery factor, as defined in § 62.1-44.19:13.

2. Such allocations or credits shall be provided for a minimum period of five years with each registration under the general permit. This subdivision shall not preclude the Board from adopting longer-term or permanent allocation requirements by regulation allocations.

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

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

C. Until such time as the Director finds that no allocations are reasonably available in an individual tributary, the general permit shall provide for the acquisition of allocations through payments into the Nutrient Offset Fund established in § 10.1-2128.2. Such payments shall be promptly applied by the Department 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 Chesapeake Bay TMDL Watershed Implementation Plan. The general permit shall base the cost of each pound of allocation on (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired, whichever is higher. Upon each reissuance of the general permit, the Board may adjust the cost of each pound of allocation based on current costs and cost estimates.

D. The acquisition of nutrient allocations or credits from animal waste-to-energy or animal waste reduction facilities, or the acquisition of such nutrient allocations or credits from entities acting on behalf of such facilities, shall be considered point source allocations or credits for all nutrient trading purposes and shall not be subject to any otherwise applicable nonpoint source trading ratio if the best management practice being used to generate such nutrient allocations or credits is a point source nutrient removal technology. Point source nutrient removal technology shall include animal waste gasification in which lab analysis of the animal waste reveals the concentration of nutrients in the animal waste being fed into the gasifier, and the fate of the nutrients during the animal waste gasification process, is known and documented using studies such as air emissions tests and ash analyses.

§ 62.1-44.19:17. Virginia Nutrient Credit Exchange Association authorized; duties; composition; appointment; terms.

A. The permittees under the general permit may establish a nonstock corporation under Chapter 10 (§ 13.1-801 et seq.) of Title 13.1, to be known as the Virginia Nutrient Credit Exchange Association, to coordinate and facilitate participation in the nutrient credit exchange program by its members. The Virginia Nutrient Credit Exchange Association, which is hereafter referred to as the Association, may (i) submit on behalf of the permittees the compliance plans required by § 62.1-44.19:14, (ii) develop a

standard form of agreement for use by permittees when buying and selling nitrogen and phosphorus allocations and credits, (iii) assist permittees in identifying buyers and sellers of nitrogen and phosphorus allocations and credits, (iv) coordinate planning to ensure that to the extent possible, sufficient credits are available each year to achieve full compliance with the general permit, (v) assist individual municipal permittees in utilizing public-private partnerships and other innovative measures to achieve the Commonwealth's water quality goals, and (vi) perform such other duties and functions as may be necessary to the effective and efficient implementation of the credit exchange program. The Association shall not assume any of the permittees' compliance obligations under the general permit.

B. Only permittees *and applicants* under the general permit, *including new or expanded facilities seeking to obtain offsets in accordance with § 62.1-44.19:15*, may become members of the Association. The Association shall operate through a board of directors, which shall consist of 10 members and be representative of the membership in the Association. Association board members shall be employees of Association members, shall be elected by the Association membership at the beginning of each term of the general permit, and shall serve through the end of the permit term to which they were elected. Vacancies for unexpired Association board terms shall be filled in the same manner in which members are originally elected to the Association board.

C. The Association board shall elect a president, vice-president, secretary, and treasurer from among its members at the beginning of each permit term. Officers and Association board members shall receive no compensation for their services as officers and board members of the Association.