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HOUSE BILL NO. 1619

Offered January 11, 2017

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A BILL to amend and reenact § 62.1-44.19:14 of the Code of Virginia, relating to watershed general permit for nutrients.

Patrons—Bulova, Lingamfelter, Herring and Kory

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 62.1-44.19:14 of the Code of Virginia is 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

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59 nontidal waters, to secure general permit coverage by filing a registration statement with the Department
60 within a specified period after each effective date of the general permit. The procedure shall also require
61 any owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System
62 permit to discharge 40,000 gallons or more per day, or an equivalent load, directly into tidal or nontidal
63 waters to secure general permit coverage by filing a registration statement with the Department at the
64 time he makes application with the Department for a new discharge or expansion that is subject to an
65 offset or technology-based requirement in § 62.1-44.19:15, and thereafter within a specified period of
66 time after each effective date of the general permit. The procedure shall also require any owner or
67 operator of a facility with a discharge that is subject to an offset requirement in subdivision A 5 of
68 § 62.1-44.19:15 to secure general permit coverage by filing a registration statement with the Department
69 prior to commencing the discharge and thereafter within a specified period of time after each effective
70 date of the general permit. The general permit shall provide that any facility authorized by a Virginia
71 Pollutant Discharge Elimination System permit and not required by this subdivision to file a registration
72 statement shall be deemed to be covered under the general permit at the time it is issued, and shall file
73 a registration statement with the Department when required by this section. Owners or operators of
74 facilities that are deemed to be permitted under this section shall have no other obligation under the
75 general permit prior to filing a registration statement and securing coverage under the general permit
76 based upon such registration statement;

77 6. A procedure for efficiently modifying the lists of facilities covered by the general permit where
78 the modification does not change or otherwise alter any waste load allocation or delivery factor adopted
79 pursuant to the Water Quality Management Planning Regulation (~~9VAC25-270~~) (9VAC25-720) or its
80 successor, or an applicable total maximum daily load. The procedure shall also provide for modifying or
81 incorporating new waste load allocations or delivery factors, including the opportunity for public notice
82 and comment on such modifications or incorporations; and

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

85 D. 1. *The Board shall (i) review during the year 2020 and every 10 years thereafter the basis for*
86 *allocations granted in the Water Quality Management Planning Regulation (9VAC25-720) and (ii) as a*
87 *result of such decennial reviews propose for inclusion in the Water Quality Management Planning*
88 *Regulation (9VAC25-720) either the reallocation of unneeded allocations to other facilities registered*
89 *under the general permit or the reservation of such allocations for future use.*

90 2. *For each decennial review, the Board shall determine whether a permitted facility has:*

91 a. *Changed the use of the facility in such a way as to make discharges unnecessary, ceased the*
92 *discharge of nutrients, and become unlikely to resume such discharges in the foreseeable future; or*

93 b. *Changed the production processes employed in the facility in such a way as to render impossible,*
94 *or significantly to diminish the likelihood of, the resumption of previous nutrient discharges.*

95 3. *Beginning in 2030, each review also shall consider the following factors for municipal wastewater*
96 *facilities:*

97 a. *Substantial changes in the size or population of a service area;*

98 b. *Significant changes in land use resulting from adopted changes to zoning ordinances or*
99 *comprehensive plans within a service area;*

100 c. *Significant establishment of conservation easements or other perpetual instruments that are*
101 *associated with a deed and that restrict growth or development;*

102 d. *Constructed treatment facility capacity;*

103 e. *Significant changes in the understanding of the water chemistry or biology of receiving waters that*
104 *would reasonably result in unused nutrient discharge allocations over an extended period of time;*

105 f. *Significant changes in treatment technologies that would reasonably result in unused nutrient*
106 *discharge allocations over an extended period of time;*

107 g. *The ability of the permitted facility to accommodate projected growth under existing nutrient waste*
108 *load allocations; and*

109 h. *Other similarly significant factors that the Board determines reasonably to affect the allocations*
110 *granted.*

111 *The Board shall not reduce allocations based solely on voluntary improvements in nutrient removal*
112 *technology.*

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

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