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HOUSE BILL NO. 1609

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 5, 2020)

(Patron Prior to Substitute—Delegate Mugler)

A *BILL to amend and reenact § 62.1-44.19:21 of the Code of Virginia, relating to nutrient credit use; regulated entities.*

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.19:21 of the Code of Virginia is amended and reenacted as follows:

§ 62.1-44.19:21. Nutrient credit use by regulated entities.

A. An MS4 permittee may acquire, use, and transfer nutrient credits for purposes of compliance with any waste load allocations established as effluent limitations in an MS4 permit issued pursuant to § 62.1-44.15:25. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits. The permittee may use such credits for compliance purposes only if (i) the credits, whether annual, term, or perpetual, are generated and applied for purposes of compliance for the same calendar year; (ii) the credits are acquired no later than a date following the calendar year in which the credits are applied as specified by the Department consistent with the permittee's Virginia Stormwater Management Program (VSMP) permit annual report deadline under such permit; (iii) the credits are generated in the same locality or tributary, except that permittees in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries; and (iv) the credits either are point source nitrogen or point source phosphorus credits generated by point sources covered by the general permit issued pursuant to § 62.1-44.19:14, or are certified pursuant to § 62.1-44.19:20. An MS4 permittee may enter into an agreement with one or more other MS4 permittees within the same locality or within the same or adjacent eight-digit hydrologic unit code to collectively meet the sum of any waste load allocations in their permits. Such permittees shall submit to the Department for approval a compliance plan to achieve their aggregate permit waste load allocations.

B. ~~Those applicants~~ *Any applicant* required to comply with water quality requirements for land-disturbing activities operating under a General VSMP Permit for Discharges of Stormwater from Construction Activities or a Construction Individual Permit may acquire and use perpetual nutrient credits certified and registered on the Virginia Nutrient Credit Registry in accordance with § 62.1-44.15:35. *Point source nitrogen credits, point source phosphorus credits, and sediment credits that are generated by a public body through a publicly owned treatment works that is permitted under the Watershed General Virginia Pollutant Discharge Elimination System (VPDES) Permit pursuant to § 62.1-44.19:14 may be used by such public body for the purpose of compliance with this subsection by the public body's project in the limited circumstance of the construction or expansion of the treatment works, wastewater collection system, or other facility used for public wastewater utility operations. The public body may only use such point source credits if (i) the public body provides notice to the Department, (ii) a ratio of 10 point source nitrogen credits for each point source phosphorus credit used is also transferred and applied toward the land-disturbing project, and (iii) the credits are classified as permanent by means of a wasteload allocation reduction or another means, acceptable to the Department, that ensures an equivalent benefit. Except for a water reclamation and reuse project at a treatment works, no more than 10 pounds per year of point source phosphorus credit may be applied toward a single project's postconstruction phosphorous control requirement.*

C. Confined animal feeding operations issued permits pursuant to this chapter may acquire, use, and transfer credits for compliance with any waste load allocations contained in the provisions of a Virginia Pollutant Discharge Elimination System (VPDES) permit. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

D. Facilities registered under the Industrial Stormwater General Permit issued pursuant to this chapter may acquire, use, and transfer credits for compliance with any waste load allocations established as effluent limitations in a VPDES permit. Such method of compliance may be approved by the Department following review of a compliance plan submitted by the permittee that includes the use of nutrient credits.

E. Public notice of each compliance plan submitted for approval pursuant to this section shall be given by the Department.

F. 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 for total nitrogen or total phosphorus in permits where those limitations are necessary to protect local water quality. The exchange

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60 or acquisition of credits pursuant to this article shall not affect any requirement to comply with such
61 local water quality-based limitations.