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HOUSE BILL NO. 2129

Offered January 13, 2021

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A BILL to amend and reenact §§ 10.1-1186.01, 62.1-44.19:13, and 62.1-44.19:14 of the Code of Virginia, relating to Chesapeake Bay Phase III Watershed Improvement Plan; nutrient removal; regulations.

Patrons—Lopez, Bulova, Adams, D.M., Carr, Helmer, Hope, Keam, Murphy, Plum, Reid, Simon and Simonds

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1186.01, 62.1-44.19:13, and 62.1-44.19:14 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1186.01. Reimbursements to localities for upgrades to treatment works.

A. As used in this section, "Enhanced Nutrient Removal Certainty Program" or "ENRC Program" means the same as that term is defined in § 62.1-44.19:13.

B. The General Assembly shall fund grants to finance the reasonable costs of design and installation of nutrient removal technology at the publicly owned treatment works designated as significant dischargers contained in subsection E, F or as eligible nonsignificant dischargers as defined in § 10.1-2117. ~~Notwithstanding § 10.1-2128, at such time as~~ When grant disbursements pursuant to this section reach 200 percent of the appropriations provided for in Chapter 951 of the Acts of Assembly of 2005 and Chapter 10 of the Acts of Assembly of 2006, Special Session I a sum sufficient to fund the completion of the ENRC Program at all publicly owned treatment works, the House Committee on Agriculture, Chesapeake and Natural Resources, the House Committee on Appropriations, the Senate Committee on Agriculture, Conservation and Natural Resources, and the Senate Committee on Finance and Appropriations shall review (i) the future funding needs to meet the purposes of the Water Quality Improvement Act, (ii) the most recent annual needs estimate required by § 10.1-2134.1, and (iii) the appropriate funding mechanism for such needs.

~~B.~~ C. The disbursement of grants for the design and installation of nutrient removal technology at those publicly owned treatment works included in subsection E F and eligible nonsignificant dischargers shall be made monthly based on a requisition submitted by the grant recipient in the form requested by the Department. Each requisition shall include written certification that the applicable local share of the cost of nutrient removal technology for that portion of the project covered by such requisition has been incurred or expended. Except as may otherwise be approved by the Department, disbursements shall not exceed 95 percent of the total grant amount until satisfactory completion of the project. The distribution of the grants shall be effected by one of the following methods:

1. In payments to be paid by the State Treasurer out of funds appropriated to the Water Quality Improvement Fund pursuant to § 10.1-2131;

2. Over a specified time through a contractual agreement entered into by the Treasury Board and approved by the Governor, on behalf of the Commonwealth, and the locality or public service authority undertaking the design and installation of nutrient removal technology, such payments to be paid by the State Treasurer out of funds appropriated to the Treasury Board; or

3. In payments to be paid by the State Treasurer upon request of the Director of ~~Environmental Quality~~ out of proceeds from bonds issued by the Virginia Public Building Authority, in consultation with the Department of ~~Environmental Quality~~, pursuant to §§ 2.2-2261, 2.2-2263, and 2.2-2264, including the Commonwealth's share of the interest costs expended by the locality or regional authority for financing such project during the period from 50% 50 percent completion of construction to final completion of construction.

~~C.~~ D. The General Assembly ~~shall have~~ has the sole authority to determine whether disbursement ~~will shall~~ be made pursuant to subdivision B 1, B 2, or B 3, or a combination thereof; provided that a disbursement shall ~~only~~ be made pursuant to subdivision B 3 ~~only~~ upon a certification by the Department of ~~Environmental Quality~~ that project grant reimbursements for the fiscal year will exceed the available funds in the Water Quality Improvement Fund. *The ENRC Program shall proceed regardless of whether project grant reimbursements for the fiscal year will exceed the available funds in the Water Quality Improvement Fund; however, no additional total nitrogen or total phosphorus waste load allocation reductions below the allocations established as of January 1, 2021, in the general permit and registration list under subdivision C 6 of § 62.1-44.19:14 shall be adopted prior to completion of*

58 *the first municipal decennial review under subdivision D 3 of § 62.1-44.19:14.*

59 ~~D. E.~~ Exclusive of any deposits made pursuant to § 10.1-2128, the grants awarded pursuant to this
60 section shall include such appropriations as provided for in Chapter 951 of the Acts of Assembly of
61 2005; and Chapter 10 of the Acts of Assembly of 2006, Special Session I from time to time in the
62 appropriation act or any amendments thereto.

63 ~~E. F.~~ The disbursement of grants to finance the costs of design and installation of nutrient removal
64 technology, *including eligible design and installation costs for implementation of the ENRC Program*, at
65 the following 89 publicly owned treatment works and other eligible nonsignificant dischargers shall be
66 provided pursuant to the distribution methodology included in § 10.1-2131. ~~However, in~~ *The notation*
67 *"WIP3-N" or "WIP3-P" indicates that a facility is subject to additional requirements for total nitrogen*
68 *or total phosphorus, respectively, under the ENRC Program. In no case shall any publicly owned*
69 *treatment works receive a grant of less than 35% 35 percent of the costs of the design and installation*
70 *of nutrient removal technology.*

71	FACILITY NAME	OWNER
72	Shenandoah - Potomac River Basin	
73	ACSA-Fishersville STP	Augusta County Service Authority
74	Luray STP	Town of Luray
75	ACSA-Middle River Regional STP	Augusta County Service Authority
76	HRRSA-North River WWTF WIP3-P	Harrisonburg-Rockingham Regional Sewer
77		Authority
78	ACSA-Stuarts Draft STP	Augusta County Service Authority
79	Waynesboro STP	City of Waynesboro
80	ACSA-Weyers Cave STP	Augusta County Service Authority
81	Berryville STP	Town of Berryville
82	Front Royal STP	Town of Front Royal
83	Mount Jackson STP	Town of Mount Jackson
84	New Market STP	Town of New Market
85	Shenandoah Co.-North Fork Regional WWTP	Shenandoah County
86	Stoney Creek Sanitary District STP	Stoney Creek Sanitary District
87	Strasburg STP	Town of Strasburg
88	Woodstock STP	Town of Woodstock
89	FWSA-Opequon Water Reclamation Facility	Frederick-Winchester Service Authority
90	FWSA-Parkins Mill WWTF	Frederick-Winchester Service Authority
91	Purcellville-Basham Simms WWTF	Town of Purcellville
92	LCSA-Broad Run WRF	Loudoun County Service Authority
93	Leesburg WPCF	Town of Leesburg
94	Round Hill WWTP	Town of Round Hill
95	PWCSA-H.L. Mooney WWTF	Prince William County Service Authority
96	Upper Occoquan Sewage Authority WWTP	Upper Occoquan Sewage Authority
97	FCW&SA-Vint Hill WWTF	Fauquier County Water and Sewer Authority
98	Alexandria Sanitation Authority WWTP	Alexandria Sanitation Authority
99	Arlington Co. WPCF	Arlington County
100	Fairfax Co. - Noman-Cole Pollution Control Facility	Fairfax County
101	Stafford Co.-Aquia WWTP	Stafford County
102	Colonial Beach STP	Town of Colonial Beach
103	Dahlgren Sanitary District WWTP	King George County Service Authority
104	Fairview Beach STP	King George County Service Authority
105	Purkins Corner WWTP	King George County Service Authority
106	District of Columbia - Blue Plains STP (Virginia	Loudoun County Service Authority and Fairfax
107	portion)	County contract for capacity
108	Rappahannock River Basin	
109	Culpeper WWTP	Town of Culpeper
110	Marshall WWTP	Town of Marshall
111	Mountain Run WWTP	Culpeper County
112	Orange STP	Town of Orange
113	Rapidan STP	Rapidan Service Authority
114	FCW&SA-Remington WWTP	Fauquier County Water and Sewer Authority
115	Warrenton STP	Town of Warrenton
116	Wilderness Shores WWTP	Rapidan Service Authority
117	Spotsylvania Co.-FMC WWTF WIP3-N, WIP3-P	Spotsylvania County
118	Fredericksburg WWTF	City of Fredericksburg
119	Stafford Co.-Little Falls Run WWTF	Stafford County
120	Spotsylvania Co.-Massaponax WWTF WIP3-N,	Spotsylvania County
121	WIP3-P	
122	Montross-Westmoreland WWTP	Westmoreland County
123	Oakland Park STP	King George County Service Authority
124	Tappahannock WWTP	Town of Tappahannock

125	Urbanna WWTP	Hampton Roads Sanitation District
126	Warsaw STP	Town of Warsaw
127	Reedville Sanitary District WWTP	Reedville Sanitary District
128	Kilmarnock WWTP	Town of Kilmarnock
129	York River Basin	
130	Caroline Co. Regional STP	Caroline County
131	Gordonsville STP	Rapidan Service Authority
132	Ashland WWTP	Hanover County
133	Doswell WWTP	Hanover County
134	HRSD-York River STP <i>WIP3-N, WIP3-P</i>	Hampton Roads Sanitation District
135	Parham Landing WWTP	New Kent County
136	Totopotomoy WWTP	Hanover County
137	HRSD-West Point STP	Hampton Roads Sanitation District
138	HRSD-Mathews Courthouse STP	Hampton Roads Sanitation District
139	<i>Spotsylvania Co.-Thornburg STP WIP3-N, WIP3-P</i>	<i>Spotsylvania County</i>
140	James River Basin	
141	Buena Vista STP <i>WIP3-P</i>	City of Buena Vista
142	Clifton Forge STP <i>WIP3-P</i>	Town of Clifton Forge
143	Covington STP <i>WIP3-P</i>	City of Covington
144	Lexington-Rockbridge Regional WQCF <i>WIP3-P</i>	Mauzy Service Authority
145	Alleghany Co.-Low Moor STP <i>WIP3-P</i>	Alleghany County
146	Alleghany Co.-Lower Jackson River WWTP <i>WIP3-P</i>	Alleghany County
147	Amherst-Rutledge Creek WWTP <i>WIP3-P</i>	Town of Amherst
148	Lynchburg STP <i>WIP3-P</i>	City of Lynchburg
149	RWSA-Moores Creek Regional STP <i>WIP3-P</i>	Rivanna Water and Sewer Authority
150	Crewe WWTP <i>WIP3-P</i>	Town of Crewe
151	Farmville WWTP <i>WIP3-P</i>	Town of Farmville
152	Chesterfield Co.-Falling Creek WWTP <i>WIP3-P</i>	Chesterfield County
153	Henrico Co. WWTP <i>WIP3-P</i>	Henrico County
154	Hopewell Regional WWTF <i>WIP3-P</i>	City of Hopewell
155	Chesterfield Co.-Proctors Creek WWTP <i>WIP3-P</i>	Chesterfield County
156	Richmond WWTP <i>WIP3-P</i>	City of Richmond
157	South Central Wastewater Authority WWTF <i>WIP3-N, WIP3-P</i>	South Central Wastewater Authority
158		
159	Chickahominy WWTP <i>WIP3-P</i>	New Kent County
160	HRSD-Boat Harbor STP <i>WIP3-N, WIP3-P</i>	Hampton Roads Sanitation District
161	HRSD-James River STP <i>WIP3-N, WIP3-P</i>	Hampton Roads Sanitation District
162	HRSD-Williamsburg STP <i>WIP3-N, WIP3-P</i>	Hampton Roads Sanitation District
163	HRSD-Nansemond STP <i>WIP3-N, WIP3-P</i>	Hampton Roads Sanitation District
164	HRSD-Army Base STP <i>WIP3-N, WIP3-P</i>	Hampton Roads Sanitation District
165	HRSD-Virginia Initiative Plant STP <i>WIP3-N, WIP3-P</i>	Hampton Roads Sanitation District
166	HRSD-Chesapeake/Elizabeth STP <i>WIP3-N, WIP3-P</i>	Hampton Roads Sanitation District
167	Eastern Shore Basin	
168	Cape Charles WWTP	Town of Cape Charles
169	Onancock WWTP	Town of Onancock
170	Tangier Island WWTP	Town of Tangier

F. G. To the extent that any publicly owned treatment works receives less than the grant specified pursuant to § 10.1-2131, any year-end revenue surplus or unappropriated balances deposited in the Water Quality Improvement Fund, as required by § 10.1-2128, shall be prioritized in order to augment the funding of those projects for which grants have been prorated. Any additional reimbursements to these prorated projects shall not exceed the total reimbursement amount due pursuant to the formula established in subsection E of § 10.1-2131.

G. H. Notwithstanding the provisions of subsection B of § 10.1-2131, the Director of the Department of Environmental Quality shall not be required to enter into a grant agreement with a facility designated as a significant discharger or eligible nonsignificant discharger if the Director determines that the use of nutrient credits in accordance with the Chesapeake Bay Watershed Nutrient Credit Exchange Program (§ 62.1-44.19:12 et seq.) would be significantly more cost-effective than the installation of nutrient controls for the facility in question.

§ 62.1-44.19:13. Definitions.

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

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

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

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

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

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

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

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

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

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

216 "Department" means the Department of Environmental Quality.

217 "*Enhanced Nutrient Removal Certainty Program*" or "*ENRC Program*" means the Phase III
218 *Watershed Implementation Plan Enhanced Nutrient Removal Certainty Program* established pursuant to
219 subsection G of § 62.1-44.19:14.

220 "Equivalent load" means 2,300 pounds per year of total nitrogen and 300 pounds per year of total
221 phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total nitrogen and 760
222 pounds per year of total phosphorus at a flow volume of 100,000 gallons per day; and 28,500 pounds
223 per year of total nitrogen and 3,800 pounds per year of total phosphorus at a flow volume of 500,000
224 gallons per day.

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

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

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

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

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

236 "Permitted facility" means a facility authorized by the general permit to discharge total nitrogen or
237 total phosphorus. For the sole purpose of generating point source nitrogen credits or point source
238 phosphorus credits, "permitted facility" shall also mean the Blue Plains wastewater treatment facility
239 operated by the District of Columbia Water and Sewer Authority.

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

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

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

252 "State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual

average total nitrogen effluent concentration of three milligrams per liter and an annual average total phosphorus effluent concentration of 0.3 milligrams per liter, or (ii) equivalent load reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the Department.

"Tributaries" means those river basins listed in the Chesapeake Bay TMDL and includes the Potomac, Rappahannock, York, and James River Basins, and the Eastern Shore, which encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

"Waste load allocation" means (i) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to the Water Quality Management Planning Regulation (9VAC25-720) or its successor, or permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to § 62.1-44.19:15 for new or expanded facilities; or (iii) applicable total nitrogen or total phosphorus waste load allocations under the Chesapeake Bay total maximum daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

§ 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, *including reduced waste load allocations where applicable under the ENRC Program*. 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. *The compliance plans due February 1, 2023, shall address the requirements of the ENRC Program;*

4. Such monitoring and reporting requirements as the Board deems necessary to carry out the provisions of this article;

314 5. A procedure that requires every owner or operator of a facility authorized by a Virginia Pollutant
315 Discharge Elimination System permit to discharge 100,000 gallons or more per day, or an equivalent
316 load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into
317 nontidal waters, to secure general permit coverage by filing a registration statement with the Department
318 within a specified period after each effective date of the general permit. The procedure shall also require
319 any owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System
320 permit to discharge 40,000 gallons or more per day, or an equivalent load, directly into tidal or nontidal
321 waters to secure general permit coverage by filing a registration statement with the Department at the
322 time he makes application with the Department for a new discharge or expansion that is subject to an
323 offset or technology-based requirement in § 62.1-44.19:15, and thereafter within a specified period of
324 time after each effective date of the general permit. The procedure shall also require any owner or
325 operator of a facility with a discharge that is subject to an offset requirement in subdivision A 5 of
326 § 62.1-44.19:15 to secure general permit coverage by filing a registration statement with the Department
327 prior to commencing the discharge and thereafter within a specified period of time after each effective
328 date of the general permit. The general permit shall provide that any facility authorized by a Virginia
329 Pollutant Discharge Elimination System permit and not required by this subdivision to file a registration
330 statement shall be deemed to be covered under the general permit at the time it is issued, and shall file
331 a registration statement with the Department when required by this section. Owners or operators of
332 facilities that are deemed to be permitted under this section shall have no other obligation under the
333 general permit prior to filing a registration statement and securing coverage under the general permit
334 based upon such registration statement;

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

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

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

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

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

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

353 3. Beginning in 2030, each review also shall consider the following factors for municipal wastewater
354 facilities:

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

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

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

360 d. Constructed treatment facility capacity;

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

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

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

367 h. Other similarly significant factors that the Board determines reasonably to affect the allocations
368 granted.

369 The Board shall not reduce allocations based solely on voluntary improvements in nutrient removal
370 technology.

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

375 F. Except as otherwise provided in this article, in the event that there are conflicting or duplicative

conditions contained in the general permit and an individual Virginia Pollutant Discharge Elimination System permit, the conditions in the general permit shall control.

G. By June 30, 2022, the Board shall adopt amendments to the Water Quality Management Planning Regulation and modifications to Virginia Pollutant Discharge Elimination System permits or registration lists to establish and implement the Phase III Watershed Implementation Plan Enhanced Nutrient Removal Certainty Program (ENRC Program) as provided in this subsection. The ENRC Program shall consist of the following projects and the following waste load allocation reductions and their respective schedules for compliance.

1. Priority projects for additional nitrogen and phosphorus removal (schedule for compliance):

PROJECT NAME	DESCRIPTION (COMPLIANCE SCHEDULE)
HRSD-Chesapeake/Elizabeth STP	Consolidate into regional system and close treatment facility (1/1/2026)
HRSD-Boat Harbor WWTP	Convey by subaqueous crossing to Nansemond River WWTP for nutrient removal (1/1/2026)
HRSD-Nansemond River WWTP	Upgrade and expand with nutrient removal technology (1/1/2026)
HRSD-Nassawadox WWTP	Convey to regional system for nutrient removal (1/1/2026)
Spotsylvania Co.-FMC WWTF	Convey to Massaponax WWTF and close treatment facility (1/1/2026)
Spotsylvania Co.-Massaponax WWTF	Expand nutrient removal facility to consolidate and close FMC WWTF (1/1/2026)
Spotsylvania Co.-Thornburg STP	Upgrade with nutrient removal technology (1/1/2026)
HRRSA-North River WWTP	Phosphorus removal tertiary filtration upgrade (1/1/2026)
South Central Wastewater Authority WWTF	Upgrade with nutrient removal technology (1/1/2026)

Each priority project and the associated schedule of compliance shall be incorporated into the applicable Virginia Pollutant Discharge Elimination System permit or registration list on an expedited basis, including by minor modification if applicable. Each priority project facility shall be in compliance by substantially completing construction by the date set out in the schedule of compliance or, for construction remaining in progress as of such date, by complying with applicable waste load allocation for compliance year 2026. Noncompliance shall be enforceable in the same manner as any other condition of a Virginia Pollutant Discharge Elimination System permit.

2. Nitrogen waste load allocation reductions - Tidal York and Tidal James Rivers (schedule for compliance):

Reduce total nitrogen waste load allocations for all publicly owned treatment works with a design capacity greater than five million gallons per day to waste load allocations based on five milligrams per liter and a delivery factor greater than or equal to 1.0 at the same design capacity, except for recognized special cases for combined systems and industrial influent-dominated publicly owned treatment works (1/1/2026).

3. James River HRSD SWIFT nutrient upgrades (schedule for compliance):

Reduce total nitrogen waste load allocations for all major HRSD treatment works in the James River basin with a design capacity greater than five million gallons per day to waste load allocations based on four milligrams per liter at the same design capacity (1/1/2026).

Reduce total phosphorus waste load allocations for all major HRSD treatment works in the James River basin with a design capacity greater than five million gallons per day to waste load allocations based on 0.5 milligrams per liter at the same design capacity (1/1/2026).

Reduce total phosphorus waste load allocations for all major HRSD treatment works in the James River basin with a design capacity greater than five million gallons per day to waste load allocations based on 0.4 milligrams per liter at the same design capacity (1/1/2030).

Reduce total phosphorus waste load allocations for all major HRSD treatment works in the James River basin with a design capacity greater than five million gallons per day to waste load allocations based on 0.3 milligrams per liter at the same design capacity (1/1/2032).

4. Phosphorus waste load allocation reductions - Tidal Fresh and Above Fall Line James River (schedule for compliance):

Reduce total phosphorus waste load allocations for all of the following publicly owned treatment works in the tidal fresh and above fall line segments of the James River basin to waste load allocations based on 0.25 milligrams per liter total phosphorus at the same design capacity (1/1/2026).

FACILITY NAME
Buena Vista STP
Clifton Forge STP
Covington STP
Lexington-Rockbridge Regional WQCF

439 *Alleghany Co.-Low Moor STP*
440 *Alleghany Co.-Lower Jackson River WWTP*
441 *Amherst-Rutledge Creek WWTP*
442 *Lynchburg STP*
443 *RWSA-Moores Creek Regional STP*
444 *Crewe WWTP*
445 *Farmville WWTP*
446 *Chesterfield Co.-Falling Creek WWTP*
447 *Henrico Co. WWTP*
448 *Hopewell Regional WWTF*
449 *Chesterfield Co.-Proctors Creek WWTP*
450 *Richmond WWTP*
451 *South Central Wastewater Authority WWTP*

452 5. *The ENRC Program and the waste load allocation reductions mandated by this subsection, along*
453 *with the projects listed in this subsection, shall be adopted by the Board and shall operate in lieu and*
454 *satisfaction of the concept of secondary floating waste load allocations proposed in the Phase III*
455 *Watershed Implementation Plan, any alternative thereto, or any additional regulation for reducing some*
456 *or all waste load allocations for total nitrogen and total phosphorus based upon standards, criteria,*
457 *policy, or guidance established to restore or protect the water quality and beneficial uses of the*
458 *Chesapeake Bay or its tidal tributaries, including numeric chlorophyll-a criteria applicable to the tidal*
459 *James River.*

460 2. **That the adoption or revision of regulations by the State Water Control Board necessary to**
461 **conform its regulations to the waste load allocation reductions and other requirements of the**
462 **Phase III Watershed Implementation Plan Enhanced Nutrient Removal Certainty Program**
463 **established by the first enactment of this act shall be exempt from the rulemaking procedures of**
464 **Article 2 (§ 2.2-4006 et seq.) of Chapter 40 of Title 2.2 of the Code of Virginia as provided in**
465 **subdivision A 4 a of § 2.2-4006 of the Code of Virginia.**

466 3. **That the State Water Control Board shall convene and consult a stakeholder advisory group**
467 **during the adoption and revision of the regulations required by the first enactment of this act.**
468 **Such stakeholder advisory group shall include representatives of affected facilities, the Chesapeake**
469 **Bay Foundation, and the James River Association.**

470 4. **That the priority projects and waste load allocation reductions set forth in the first enactment**
471 **of this act are deemed to implement Chesapeake Bay Phase III Watershed Implementation Plan**
472 **goals, including the goal of mitigating certain climate change impacts by 2025; however, the**
473 **inclusion of such projects and reductions in this act shall not be interpreted to preclude the**
474 **consideration of any additional priority project or waste load allocation reduction that is intended**
475 **to assist in mitigating the impacts of post-2025 climate change in a future implementation phase.**