

2021 SPECIAL SESSION I

SENATE SUBSTITUTE

21103786D

SENATE BILL NO. 1354

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources on February 4, 2021)

(Patron Prior to Substitute—Senator Hanger)

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.

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 C 1, B 2, or B 3, or a combination thereof; provided that a disbursement shall only be made pursuant to subdivision B C 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.

D. E. Exclusive of any deposits made pursuant to § 10.1-2128, the grants awarded pursuant to this section shall include such appropriations as 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 from time to time in the appropriation act or any amendments thereto.

E. F. The disbursement of grants to finance the costs of design and installation of nutrient removal technology, including eligible design and installation costs for implementation of the ENRC Program, at the following 89 listed publicly owned treatment works and other eligible nonsignificant dischargers shall be provided pursuant to the distribution methodology included in § 10.1-2131. However, in The

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60 notation "WIP3-N" or "WIP3-P" indicates that a facility is subject to additional requirements for total  
 61 nitrogen or total phosphorus, respectively, under the ENRC Program. In no case shall any publicly  
 62 owned treatment works receive a grant of less than ~~35%~~ 35 percent of the costs of the design and  
 63 installation of nutrient removal technology.

64	FACILITY NAME	OWNER
65	Shenandoah - Potomac River Basin	
66	ACSA-Fishersville STP	Augusta County Service Authority
67	Luray STP	Town of Luray
68	ACSA-Middle River Regional STP	Augusta County Service Authority
69	HRRSA-North River WWTF WIP3-P	Harrisonburg-Rockingham Regional Sewer Authority
70		
71	ACSA-Stuarts Draft STP	Augusta County Service Authority
72	Waynesboro STP	City of Waynesboro
73	ACSA-Weyers Cave STP	Augusta County Service Authority
74	Berryville STP	Town of Berryville
75	Front Royal STP	Town of Front Royal
76	Mount Jackson STP	Town of Mount Jackson
77	New Market STP	Town of New Market
78	Shenandoah Co.-North Fork Regional WWTP	Shenandoah County
79	Stoney Creek Sanitary District STP	Stoney Creek Sanitary District
80	Strasburg STP	Town of Strasburg
81	Woodstock STP	Town of Woodstock
82	FWSA-Opequon Water Reclamation Facility	Frederick-Winchester Service Authority
83	FWSA-Parkins Mill WWTF	Frederick-Winchester Service Authority
84	Purcellville-Basham Simms WWTF	Town of Purcellville
85	LCSA-Broad Run WRF	Loudoun County Service Authority
86	Leesburg WPCF	Town of Leesburg
87	Round Hill WWTP	Town of Round Hill
88	PWCSA-H.L. Mooney WWTF	Prince William County Service Authority
89	Upper Occoquan Sewage Authority WWTP	Upper Occoquan Sewage Authority
90	FCW&SA-Vint Hill WWTF	Fauquier County Water and Sewer Authority
91	Alexandria Sanitation Authority WWTP	Alexandria Sanitation Authority
92	Arlington Co. WPCF	Arlington County
93	Fairfax Co. - Noman-Cole Pollution Control Facility	Fairfax County
94	Stafford Co.-Aquia WWTP	Stafford County
95	Colonial Beach STP	Town of Colonial Beach
96	Dahlgren Sanitary District WWTP	King George County Service Authority
97	Fairview Beach STP	King George County Service Authority
98	Purkins Corner WWTP	King George County Service Authority
99	District of Columbia - Blue Plains STP (Virginia portion)	Loudoun County Service Authority and Fairfax County contract for capacity
100		
101	Rappahannock River Basin	
102	Culpeper WWTP	Town of Culpeper
103	Marshall WWTP	Town of Marshall
104	Mountain Run WWTP	Culpeper County
105	Orange STP	Town of Orange
106	Rapidan STP	Rapidan Service Authority
107	FCW&SA-Remington WWTP	Fauquier County Water and Sewer Authority
108	Warrenton STP	Town of Warrenton
109	Wilderness Shores WWTP	Rapidan Service Authority
110	Spotsylvania Co.-FMC WWTF WIP3-N, WIP3-P	Spotsylvania County
111	Fredericksburg WWTF	City of Fredericksburg
112	Stafford Co.-Little Falls Run WWTF	Stafford County
113	Spotsylvania Co.-Massaponax WWTF WIP3-N, WIP3-P	Spotsylvania County
114		
115	Montross-Westmoreland WWTP	Westmoreland County
116	Oakland Park STP	King George County Service Authority
117	Tappahannock WWTP	Town of Tappahannock
118	Urbanna WWTP	Hampton Roads Sanitation District
119	Warsaw STP	Town of Warsaw
120	Reedville Sanitary District WWTP	Reedville Sanitary District
121	Kilmarnock WWTP	Town of Kilmarnock
122	York River Basin	
123	Caroline Co. Regional STP	Caroline County
124	Gordonsville STP	Rapidan Service Authority
125	Ashland WWTP	Hanover County
126	Doswell WWTP	Hanover County

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

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

170 G. H. Notwithstanding the provisions of subsection B of § 10.1-2131, the Director of the Department  
 171 of Environmental Quality shall not be required to enter into a grant agreement with a facility designated  
 172 as a significant discharger or eligible nonsignificant discharger if the Director determines that the use of  
 173 nutrient credits in accordance with the Chesapeake Bay Watershed Nutrient Credit Exchange Program  
 174 (§ 62.1-44.19:12 et seq.) would be significantly more cost-effective than the installation of nutrient  
 175 controls for the facility in question.

176 § 62.1-44.19:13. Definitions.

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

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

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

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

191 "Attenuation" means the rate at which nutrients are reduced through natural processes during

192 transport in water.

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

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

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

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

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

209 "Department" means the Department of Environmental Quality.

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

213 "Equivalent load" means 2,300 pounds per year of total nitrogen and 300 pounds per year of total  
214 phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total nitrogen and 760  
215 pounds per year of total phosphorus at a flow volume of 100,000 gallons per day; and 28,500 pounds  
216 per year of total nitrogen and 3,800 pounds per year of total phosphorus at a flow volume of 500,000  
217 gallons per day.

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

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

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

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

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

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

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

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

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

245 "State-of-the-art nutrient removal technology" means (i) technology that will achieve an annual  
246 average total nitrogen effluent concentration of three milligrams per liter and an annual average total  
247 phosphorus effluent concentration of 0.3 milligrams per liter, or (ii) equivalent load reductions in total  
248 nitrogen and total phosphorus through recycle or reuse of wastewater as determined by the Department.

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

253 "Waste load allocation" means (i) the water quality-based annual mass load of total nitrogen or

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

261 **§ 62.1-44.19:14. Watershed general permit for nutrients.**

262 A. ~~By January 1, 2006, or as soon thereafter as possible,~~ the Board shall issue a Watershed  
263 General Virginia Pollutant Discharge Elimination System Permit, hereafter referred to as the general  
264 permit, authorizing point source discharges of total nitrogen and total phosphorus to the waters of the  
265 Chesapeake Bay and its tributaries. Except as otherwise provided in this article, the general permit shall  
266 control in lieu of technology-based, water quality-based, and best professional judgment, interim or final  
267 effluent limitations for total nitrogen and total phosphorus in individual Virginia Pollutant Discharge  
268 Elimination System permits for facilities covered by the general permit where the effluent limitations for  
269 total nitrogen and total phosphorus in the individual permits are based upon standards, criteria, waste  
270 load allocations, policy, or guidance established to restore or protect the water quality and beneficial  
271 uses of the Chesapeake Bay or its tidal tributaries.

272 B. This section shall not be construed to limit or otherwise affect the Board's authority to establish  
273 and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus  
274 in individual permits where those limitations are necessary to protect local water quality. The exchange  
275 or acquisition of credits pursuant to this article shall not affect any requirement to comply with such  
276 local water quality-based limitations.

277 C. The general permit shall contain the following:

278 1. Waste load allocations for total nitrogen and total phosphorus for each permitted facility expressed  
279 as annual mass loads, *including reduced waste load allocations where applicable under the ENRC*  
280 *Program*. The allocations for each permitted facility shall reflect the applicable individual water  
281 quality-based total nitrogen and total phosphorus waste load allocations. An owner or operator of two or  
282 more facilities located in the same tributary may apply for and receive an aggregated waste load  
283 allocation for total nitrogen and an aggregated waste load allocation for total phosphorus for multiple  
284 facilities reflecting the total of the water quality-based total nitrogen and total phosphorus waste load  
285 allocations established for such facilities individually;

286 2. A schedule requiring compliance with the combined waste load allocations for each tributary as  
287 soon as possible taking into account (i) opportunities to minimize costs to the public or facility owners  
288 by phasing in the implementation of multiple projects; (ii) the availability of required services and  
289 skilled labor; (iii) the availability of funding from the Virginia Water Quality Improvement Fund as  
290 established in § 10.1-2128, the Virginia Water Facilities Revolving Fund as established in § 62.1-225,  
291 and other financing mechanisms; (iv) water quality conditions; and (v) other relevant factors. Following  
292 receipt of the compliance plans required by subdivision C 3, the Board shall reevaluate the schedule  
293 taking into account the information in the compliance plans and the factors in this subdivision, and may  
294 modify the schedule as appropriate;

295 3. A requirement that ~~within nine months after the initial effective date of the general permit,~~ the  
296 permittees shall either individually or through the Association submit compliance plans to the  
297 Department for approval. The compliance plans shall contain, at a minimum, any capital projects and  
298 implementation schedules needed to achieve total nitrogen and phosphorus reductions sufficient to  
299 comply with the individual and combined waste load allocations of all the permittees in the tributary.  
300 The compliance plans may rely on the exchange of point source credits in accordance with this article,  
301 but not the acquisition of credits through payments authorized by § 62.1-44.19:18, to achieve compliance  
302 with the individual and combined waste load allocations in each tributary. The compliance plans shall be  
303 updated annually and submitted to the Department no later than February 1 of each year. *The*  
304 *compliance plans due beginning February 1, 2023, shall address the requirements of the ENRC*  
305 *Program;*

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

308 5. A procedure that requires every owner or operator of a facility authorized by a Virginia Pollutant  
309 Discharge Elimination System permit to discharge 100,000 gallons or more per day, or an equivalent  
310 load, directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into  
311 nontidal waters, to secure general permit coverage by filing a registration statement with the Department  
312 within a specified period after each effective date of the general permit. The procedure shall also require  
313 any owner or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System  
314 permit to discharge 40,000 gallons or more per day, or an equivalent load, directly into tidal or nontidal

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

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

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

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

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

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

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

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

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

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

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

354 d. Constructed treatment facility capacity;

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

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

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

361 h. Other similarly significant factors that the Board determines reasonably to affect the allocations  
362 granted.

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

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

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

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

377 for compliance.

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

379	PROJECT NAME	DESCRIPTION (COMPLIANCE SCHEDULE)
380	HRSD-Chesapeake/Elizabeth STP	Consolidate into regional system and close treatment facility (1/1/2023)
381		
382	HRSD-Boat Harbor WWTP	Convey by subaqueous crossing to Nansemond River WWTP for nutrient removal (1/1/2026)
383		
384	HRSD-Nansemond River WWTP	Upgrade and expand with nutrient removal technology of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2032)
385		
386		
387	HRSD-Nassawadox WWTP	Convey to regional system for nutrient removal (1/1/2026)
388	Spotsylvania Co.-FMC WWTF	Convey to Massaponax WWTF and close treatment facility (1/1/2026)
389		
390	Spotsylvania Co.-Massaponax WWTF	Expand with nutrient removal technology of 4.0 mg/L total nitrogen and 0.30 mg/L total phosphorus to consolidate and close FMC WWTF (1/1/2026)
391		
392		
393	Spotsylvania Co.-Thornburg STP	Upgrade with nutrient removal technology of 4.0 mg/L total nitrogen and 0.30 mg/L total phosphorus (1/1/2026)
394		
395	HRRSA-North River WWTP	Phosphorus removal tertiary filtration upgrade (1/1/2026)
396	South Central Wastewater Authority WWTF	Upgrade with nutrient removal technology of 4.0 mg/L total nitrogen and 0.30 mg/L total phosphorus (1/1/2026)
397		
398	HRSD-Williamsburg WWTP	Upgrade with nutrient removal technology of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2032)
399		
400		
401	HRSD-VIP WWTP	Upgrade with nutrient removal technology of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2032)
402		
403		
404	HRSD-James River WWTP	Upgrade with nutrient removal technology of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2028)
405		
406		
407	HRSD-Army Base WWTP	Convey to VIP WWTP for nutrient removal (1/1/2032) or upgrade with nutrient removal technology of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2032)
408		
409		
410		

411 Each priority project and the associated schedule of compliance shall be incorporated into the  
 412 applicable Virginia Pollutant Discharge Elimination System permit or registration list. Each priority  
 413 project facility shall be in compliance by complying with applicable annual average total nitrogen and  
 414 total phosphorus concentrations for compliance years 2026, 2028, and 2032 or, only for a facility  
 415 subject to an aggregated waste load allocation, by exercising the option of achieving an equivalent  
 416 discharged load by the date set out in the schedule of compliance based on the applicable total nitrogen  
 417 and total phosphorus annual average concentrations and actual annual flow treated without the  
 418 acquisition and use of point source credits generated by permitted facilities not under common  
 419 ownership. Noncompliance shall be enforceable in the same manner as any other condition of a Virginia  
 420 Pollutant Discharge Elimination System permit.

421 2. Nitrogen waste load allocation reductions - HRSD-York River WWTP:

422 Reduce the total nitrogen waste load allocation for the HRSD-York River WWTP to 228,444 lbs/year  
 423 effective January 1, 2026.

424 3. James River HRSD SWIFT nutrient upgrades:

425 Reduce total nitrogen waste load allocations for HRSD treatment works in the James River basin to  
 426 the following allocations effective January 1, 2026:

427	FACILITY NAME	TOTAL NITROGEN WASTELOAD ALLOCATION (lbs/year)
428		
429	HRSD-Army Base WWTP	219,307
430	HRSD-Boat Harbor STP	304,593
431	HRSD-James River STP	243,674
432	HRSD-VIP WWTP	487,348
433	HRSD-Nansemond STP	365,511
434	HRSD-Williamsburg STP	274,133

435 Reduce total phosphorus waste load allocations for HRSD treatment works in the James River basin  
 436 to the following allocations effective January 1, 2026:

437	FACILITY NAME	TOTAL PHOSPHORUS WASTELOAD ALLOCATION (lbs/year)
438		
439	HRSD-Army Base WWTP	27,413
440	HRSD-Boat Harbor STP	38,074
441	HRSD-James River STP	30,459

442	HRSD-VIP WWTP	60,919
443	HRSD-Nansemond STP	45,689
444	HRSD-Williamsburg STP	34,267

445 *Reduce total phosphorus waste load allocations for HRSD treatment works in the James River basin*  
 446 *to the following allocations effective January 1, 2030:*

447	FACILITY NAME	TOTAL PHOSPHORUS WASTELOAD ALLOCATION
448		(lbs/year)
449	HRSD-Army Base WWTP	21,931
450	HRSD-Boat Harbor STP	30,459
451	HRSD-James River STP	24,367
452	HRSD-VIP WWTP	48,735
453	HRSD-Nansemond STP	36,551
454	HRSD-Williamsburg STP	27,413

455 *Reduce total phosphorus waste load allocations for HRSD treatment works in the James River basin*  
 456 *to the following allocations effective January 1, 2032:*

457	FACILITY NAME	TOTAL PHOSPHORUS WASTELOAD ALLOCATION
458		(lbs/year)
459	HRSD-Army Base WWTP	16,448
460	HRSD-Boat Harbor STP	22,844
461	HRSD-James River STP	18,276
462	HRSD-VIP WWTP	36,551
463	HRSD-Nansemond STP	27,413
464	HRSD-Williamsburg STP	20,560

465 *Transfer the total nitrogen (454,596 lbs/year) and total phosphorus (41,450 lbs/year) waste load*  
 466 *allocations for the HRSD-Chesapeake/Elizabeth STP to the Nutrient Offset Fund effective January 1,*  
 467 *2026.*

468 *Transfer the total nitrogen (153,500 lbs/yr) and total phosphorous (17,437 lbs/yr) waste load*  
 469 *allocations for the HRSD-J.H. Miles Facility consolidation to HRSD in accordance with the approved*  
 470 *registration list December 21, 2015, transfer.*

471 **2. That the Enhanced Nutrient Removal Certainty Program as established in subdivisions G 1, 2,**  
 472 **and 3 of § 62.1-44.19:14 of the Code of Virginia, as amended by this act, shall be deemed to**  
 473 **implement through January 1, 2026, the Commonwealth's Chesapeake Bay Phase III Watershed**  
 474 **Implementation Plan in lieu of the floating waste load allocation concept proposed in Initiative 52**  
 475 **of the Commonwealth's Chesapeake Bay Phase III Watershed Implementation Plan. However,**  
 476 **nothing in this act shall be construed to limit the State Water Control Board's authority to impose**  
 477 **(i) additional requirements or modifications to phosphorous waste load allocations necessary to**  
 478 **achieve compliance with the numeric chlorophyll-a criteria applicable to the James River; (ii)**  
 479 **requirements or modifications to waste load allocations necessary to comply with changes to**  
 480 **federal law that become effective after January 1, 2021; or (iii) requirements or modifications to**  
 481 **waste load allocations necessary to comply with a court order issued after January 1, 2021.**

482 **3. That the State Water Control Board shall modify the Virginia Pollutant Discharge Elimination**  
 483 **System (VPDES) permits for the facilities listed in subdivision G 1 of § 62.1-44.19:14 of the Code**  
 484 **of Virginia, as amended by this act, to include any requirements and compliance schedules**  
 485 **established in this act.**

486 **4. That if the Secretary of Natural Resources (the Secretary) determines on or after July 1, 2026,**  
 487 **that the Commonwealth has not achieved, or in the event of increased nutrient loads associated**  
 488 **with climate change will not be able to maintain, its nitrogen pollution reduction commitments in**  
 489 **the Chesapeake Bay Total Maximum Daily Load (TMDL) Phase III Watershed Implementation**  
 490 **Plan, the Secretary may develop an additional watershed implementation plan or plans pursuant**  
 491 **to § 2.2-218 of the Code of Virginia. Any such plan shall take into consideration the progress**  
 492 **made by all point and nonpoint sources toward meeting applicable load and waste load allocations,**  
 493 **the best available science and water quality modeling, and any applicable U.S. Environmental**  
 494 **Protection Agency guidance for Chesapeake Bay TMDL implementation. In any such plan, the**  
 495 **Secretary may include as priority projects upgrades with nutrient removal technology of 4.0 mg/L**  
 496 **annual average total nitrogen concentration at municipal wastewater treatment facilities with a**  
 497 **design capacity greater than 10.0 MGD discharging to James River Segment JMSTF2 so long as**  
 498 **(i) the scheduled date for compliance is January 1, 2036; (ii) notwithstanding the wasteload**  
 499 **allocations specified in clause (iii), compliance requires operating the nutrient removal technology**  
 500 **to achieve an annual average total nitrogen concentration of less than or equal to 4.0 mg/L or,**  
 501 **until such time as the facility is upgraded to achieve such concentration, the option of achieving an**  
 502 **equivalent discharged load based on an annual average total nitrogen concentration of 4.0 mg/L**  
 503 **and actual annual flow treated, including the use of point source nitrogen credits; and (iii) the**  
 504 **facilities have and retain the following total nitrogen waste load allocations: Falling Creek WWTP**

505 (182,738 lbs/year), Proctors Creek WWTP (411,151 lbs/year and, in the event that Proctors Creek  
506 WWTP is expanded in accordance with 9VAC25-40-70 and Falling Creek WWTP is upgraded to  
507 achieve 4.0 mg/L, 493,391 lbs/year), and Henrico County WWTP (1,142,085 lbs/year). If the  
508 Secretary opts to include such facilities in the plan, the State Water Control Board shall include  
509 the foregoing concentrations limits, waste load allocations, and schedules for compliance in the  
510 Water Quality Management Planning Regulation, the Watershed General Virginia Pollutant  
511 Discharge Elimination System permit, and individual VPDES permits, as applicable.