

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 62.1-44.19:20 of the Code of Virginia, relating to accelerated stream*
3 *nutrient credit release.*

4 [S 187]
5 Approved

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 62.1-44.19:20 of the Code of Virginia is amended and reenacted as follows:**

8 **§ 62.1-44.19:20. Nutrient credit certification.**

9 A. The Board may adopt regulations for the purpose of establishing procedures for the certification
10 of point source nutrient credits except that no certification shall be required for point source nitrogen
11 and point source phosphorus credits generated by point sources regulated under the Watershed General
12 Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board
13 shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source
14 nutrient credits.

15 B. Regulations adopted pursuant to this section shall:

16 1. Establish procedures for the certification and registration of credits, including:

17 a. Certifying credits that may be generated from effective nutrient controls or removal practices,
18 including activities associated with the types of facilities or practices historically regulated by the Board,
19 such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse;

20 b. Certifying credits that may be generated from agricultural and urban stormwater best management
21 practices, use or management of manures, managed turf, land use conversion, stream or wetlands
22 projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of nutrient
23 control or removal, as appropriate;

24 c. Establishing a process and standards for wetland or stream credits to be converted to nutrient
25 credits. Such process and standards shall only apply to wetland or stream credits that were established
26 after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be
27 used for both wetland or stream credit and nutrient credit purposes;

28 d. Certifying credits from multiple practices that are bundled as a package by the applicant;

29 e. Prohibiting the certification of credits generated from activities funded by federal or state water
30 quality grant funds other than controls and practices under subdivision B 1 a; however, baseline levels
31 may be achieved through the use of such grants;

32 f. Establishing a timely and efficient certification process including application requirements, a
33 reasonable application fee schedule not to exceed \$10,000 per application, and review and approval
34 procedures;

35 g. Requiring public notification of a proposed nutrient credit-generating entity; and

36 h. Establishing a timeline for the consideration of certification applications for land conversion
37 projects. The timeline shall provide that within 30 days of receipt of an application the Department
38 shall, if warranted, conduct a site visit and that within 45 days of receipt of an application the
39 Department shall either determine that the application is complete or request additional specific
40 information from the applicant. A determination that an application for a land conversion project is
41 complete shall not require the Department to issue the certification. The Department shall deny, approve,
42 or approve with conditions an application within 15 days of the Department's determination that the
43 application is complete. When the request for credit release is made concurrently with the application for
44 a land conversion project certification, the concurrent release shall be processed on the same timeline.
45 When the request for credit release is from a previously approved land conversion project, the
46 Department shall schedule a site visit, if warranted, within 30 days of the request and shall deny,
47 approve, or approve with conditions the release within 15 days of the site visit or determination that a
48 site visit is not warranted. The timelines set out in this subdivision shall be implemented prior to
49 adoption of regulations. The Department shall release credits from a land conversion project after it is
50 satisfied that the applicant has met the criteria for release in an approved nutrient reduction
51 implementation plan.

52 2. Establish credit calculation procedures for proposed credit-generating practices, including the
53 determination of:

54 a. Baselines for credits certified under subdivision B 1 a in accordance with any applicable
55 provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

56 b. Baselines established for agricultural practices, which shall be those actions necessary to achieve a

57 level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or
58 approved TMDLs as implemented on the tract, field, or other land area under consideration;

59 c. Baselines for urban practices from new development and redevelopment, which shall be in
60 compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management
61 Program regulations. Baselines for all other existing development shall be at a level necessary to achieve
62 the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed
63 Implementation Plan or approved TMDLs;

64 d. Baselines for land use conversion, which shall be based on the pre-conversion land use and the
65 level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or
66 approved TMDLs applicable to that land use;

67 e. Baselines for other nonpoint source credit-generating practices, which shall be based on the
68 Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best
69 available scientific and technical information;

70 f. Unless otherwise established by the Board, for certification within the Chesapeake Bay Watershed
71 a credit-generating practice that involves land use conversion, which shall represent controls beyond
72 those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the practice
73 shall represent controls beyond those in place at the time of TMDL approval;

74 g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia
75 Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

76 h. Credit quantities, which shall be established using the best available scientific and technical
77 information at the time of certification;

78 3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years, or
79 perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a term
80 of no less than 12 months;

81 4. Establish requirements to reasonably assure the generation of the credit depending on the nature of
82 the credit-generating activity and use, such as legal instruments for perpetual credits, operation and
83 maintenance requirements, and associated financial assurance requirements. Financial assurance
84 requirements may include letters of credit, escrows, surety bonds, insurance, and where the credits are
85 used or generated by a locality, authority, utility, sanitation district, or permittee operating an MS4 or a
86 point source permitted under this article, its existing tax or rate authority. *Notwithstanding any release
87 schedule set out in regulations of the Board, the Department may accelerate the release of a maximum
88 of 50 percent of nutrient credits from a stream restoration project based on (i) a determination that the
89 level of risk for restoration failure is low, (ii) the provision of additional financial assurance in an
90 amount adequate to cover the cost of project repair or replacement in the event of failure, and (iii) the
91 experience of the applicant or the applicant's agents who will implement the stream restoration project;*

92 5. Establish appropriate reporting requirements;

93 6. Provide for the ability of the Department to inspect or audit for compliance with the requirements
94 of such regulations;

95 7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate any
96 requirement to comply with local water quality requirements;

97 8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the
98 Chesapeake Bay Watershed other than controls and practices under subdivision B 1 a are permanently
99 retired at the time of certification pursuant to this section for the purposes of offsetting growth in
100 unregulated nutrient loads; and

101 9. Establish such other requirements as the Board deems necessary and appropriate.

102 C. Prior to the adoption of such regulations, the Board shall certify (i) credits that may be generated
103 from effective nutrient controls or removal practices, including activities associated with the types of
104 facilities or practices historically regulated by the Board, such as water withdrawal and treatment and
105 wastewater collection, treatment, and beneficial reuse, on a case-by-case basis using the best available
106 scientific and technical information and (ii) credits that are located in tributaries outside of the
107 Chesapeake Bay watershed as defined in § 62.1-44.15:35, using an average of the nutrient removal rates
108 for each practice identified in Appendix A of the Department's document "Trading Nutrient Reductions
109 from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for
110 Agricultural Landowners and Your Potential Trading Partners."

111 D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of credits
112 as follows:

113 1. The registry shall include all nonpoint source credits certified pursuant to this article and may
114 include point source nitrogen and point source phosphorus credits generated from point sources covered
115 by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified
116 pursuant to this section at the option of the owner. No other credits shall be valid for compliance
117 purposes.

118 2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such
119 credits from transferring the credits on such commercial terms as may be established by and between the
120 owner and the regulated or unregulated party acquiring the credits.

121 3. The Department shall establish procedures for the listing and tracking of credits on the registry,
122 including but not limited to (i) notification of the availability of new nutrient credits to the locality
123 where the credit-generating practice is implemented at least five business days prior to listing on the
124 registry to provide the locality an opportunity to acquire such credits at fair market value for compliance
125 purposes and (ii) notification that the listing of credits on the registry does not constitute a
126 representation by the Board or the owner that the credits will satisfy the specific regulatory requirements
127 applicable to the prospective user's intended use and that the prospective user is encouraged to contact
128 the Board for technical assistance to identify limitations, if any, applicable to the intended use.

129 4. The registry shall be publicly accessible without charge.

130 E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply
131 with the provisions of this section shall be subject to the enforcement and penalty provisions of
132 § 62.1-44.19:22.

133 F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a
134 Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012,
135 shall be considered certified nutrient credits and shall not be subject to further certification requirements
136 or to the credit retirement requirement under subdivision B 8. However, such facilities shall be subject
137 to the other provisions of this article, including registration, inspection, reporting, and enforcement.

138 **2. That the provisions of this act shall become effective 30 days after the Department of**
139 **Environmental Quality issues guidance regarding the implementation of this act.**