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HOUSE BILL NO. 1982

Offered January 13, 2021

Prefiled January 11, 2021

A *BILL to amend and reenact § 62.1-44.19:21 of the Code of Virginia, relating to nutrient credits; use by facility with permit for stormwater discharges.*

Patrons—Bulova, Lopez, Kory, Murphy and Willett; Senators: Hanger and Lewis

Referred to Committee on Agriculture, Chesapeake and Natural Resources

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~~ An 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.

~~C. Confined~~ A confined animal feeding operations operation issued permits a permit 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~~ A facility registered under the Industrial Stormwater General Permit issued pursuant to this chapter or issued a VPDES permit regulating stormwater discharges that requires nitrogen and phosphorus monitoring at the facility 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. *The permittee may use such credits for compliance purposes only if the credits are (i) generated and applied for purposes of compliance during the same calendar year, whether such credits are annual, term, or perpetual; (ii) acquired no later than a date specified by the Department following the calendar year in which the credits are applied; (iii) generated in the same tributary and upstream of the point of discharge, except that permittees in the Eastern Coastal Basin may also acquire credits from the Potomac and Rappahannock tributaries; and (iv) either (a) credits certified pursuant to § 62.1-44.19:20 or (b) 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.*

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 or acquisition of credits pursuant to this article shall not affect any requirement to comply with such

59 local water quality-based limitations.