

VIRGINIA ACTS OF ASSEMBLY -- 2023 SESSION

CHAPTER 178

An Act to amend and reenact § 62.1-44.19:14 of the Code of Virginia, relating to South Central Wastewater Authority; watershed general permit for nutrients.

[S 963]

Approved March 22, 2023

Be it enacted by the General Assembly of Virginia:

1. That § 62.1-44.19:14 of the Code of Virginia is amended and reenacted as follows:

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

A. 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 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 beginning 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;

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

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

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

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

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

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

- a. Changed the use of the facility in such a way as to make discharges unnecessary, ceased the discharge of nutrients, and become unlikely to resume such discharges in the foreseeable future; or
- b. Changed the production processes employed in the facility in such a way as to render impossible, or significantly to diminish the likelihood of, the resumption of previous nutrient discharges.

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

- a. Substantial changes in the size or population of a service area;
- b. Significant changes in land use resulting from adopted changes to zoning ordinances or comprehensive plans within a service area;
- c. Significant establishment of conservation easements or other perpetual instruments that are associated with a deed and that restrict growth or development;
- d. Constructed treatment facility capacity;
- e. Significant changes in the understanding of the water chemistry or biology of receiving waters that would reasonably result in unused nutrient discharge allocations over an extended period of time;
- f. Significant changes in treatment technologies that would reasonably result in unused nutrient discharge allocations over an extended period of time;
- g. The ability of the permitted facility to accommodate projected growth under existing nutrient waste load allocations; and
- h. Other similarly significant factors that the Board determines reasonably to affect the allocations granted.

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

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

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. 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 (1/1/2023)
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 of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2032)
HRSD-Nassawadox WWTP	Convey to regional system for nutrient removal (1/1/2026)
Fredericksburg WWTF	Expand with nutrient removal technology of 3.0 mg/L total nitrogen and 0.22 mg/L total phosphorus (1/1/2026)
Spotsylvania Co.-FMC WWTF	Convey to Massaponax WWTF and close treatment facility (1/1/2026)
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)
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)
HRRSA-North River WWTP	Phosphorus removal tertiary filtration upgrade (1/1/2026)
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)
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)
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)
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)
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)

Each priority project and the associated schedule of compliance shall be incorporated into the applicable Virginia Pollutant Discharge Elimination System permit or registration list. Each priority project facility shall be in compliance (i) by complying with applicable annual average total nitrogen and total phosphorus concentrations for compliance years 2026, 2028, and 2032; (ii) *for the South Central Wastewater Authority WWTF, by implementing a phased construction program approved by the Department, and acquiring sufficient point source credits until its phased construction is completed as provided in this subsection; or;* (iii) only for a facility subject to an aggregated waste load allocation, by exercising the option of achieving an equivalent discharged load by the date set out in the schedule of compliance based on the applicable total nitrogen and total phosphorus annual average concentrations and actual annual flow treated without the acquisition and use of point source credits generated by permitted facilities not under common ownership. Noncompliance shall be enforceable in the same manner as any other condition of a Virginia Pollutant Discharge Elimination System permit.

The following requirements shall apply to the phased construction program to upgrade the South Central Wastewater Authority WWTF: (a) by August 1, 2023, the South Central Wastewater Authority (SCWWA) shall submit a phased construction program to the Department, which shall review and approve such program by September 1, 2023, or as soon as possible thereafter; (b) by December 31, 2023, or within 150 days of approval by the Department of the phased construction program, whichever is later, SCWWA shall commence construction of the initial phase of construction; (c) by February 1, 2024, and annually thereafter, SCWWA shall submit a progress report to the Department describing its progress toward completing the phased construction program; (d) within 30 days of substantial completion of each major phase of construction, SCWWA shall submit an application for a certificate to operate to the Department and promptly place the associated treatment units into operation; (e) the phased construction program for the SCWWA WWTF priority project shall be completed as soon as possible on the schedule approved by the Department but no later than January 1, 2030; and (f) for each compliance year during the phased construction program that the facility does not achieve the nutrient removal technology concentration specified in this subsection, the SCWWA WWTF shall be

responsible for acquiring sufficient point source credits to comply with its total nitrogen and total phosphorus waste load allocations applicable to that compliance year.

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

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

3. James River HRSD SWIFT nutrient upgrades:

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

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

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

FACILITY NAME	TOTAL PHOSPHORUS WASTELOAD ALLOCATION (lbs/year)
HRSD-Army Base WWTP	27,413
HRSD-Boat Harbor STP	38,074
HRSD-James River STP	30,459
HRSD-VIP WWTP	60,919
HRSD-Nansemond STP	45,689
HRSD-Williamsburg STP	34,267

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

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

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

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

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

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

2. That the Department of Environmental Quality, concurrently with its approval of the phased construction program for the upgrade of the South Central Wastewater Authority Wastewater Treatment Facility listed in subdivision G 1 of § 62.1-44.19:14 of the Code of Virginia, as amended by this act, shall execute corresponding amendments to the water quality improvement agreement pursuant to § 10.1-2131 of the Code of Virginia consistent with the scope and schedule of the approved phased construction program.

3. That the Department of Environmental Quality, by December 31, 2023, or as soon as possible thereafter, shall modify the Virginia Pollutant Discharge Elimination System permit for the South Central Wastewater Authority Wastewater Treatment Facility as listed in subdivision G 1 of § 62.1-44.19:14 of the Code of Virginia, as amended by this act, to include the requirements and compliance schedule established in this act.