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Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation	9 VAC 25-720
Regulation title	Water Quality Management Planning Regulation
Action title	Amend Nutrient Waste Load Allocations in Section 720-120.C. (York River Basin) to add Louisa Co.-Zion Crossroads WWTP (VPDES #VA0090743)
Date this document prepared	September 10, 2007

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Purpose

Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.

The purpose of the regulatory action is to consider Louisa County's petition to add nutrient waste load allocations (WLAs) in the Water Quality Management Planning Regulation, 9 VAC 25-720, for their Zion Crossroads wastewater plant. The existing plant is certified to operate at a permitted design flow of 0.1 million gallons per day (MGD) and is a "non-significant" discharger. Therefore, the plant did not receive nutrient WLAs in 9 VAC 25-720 when the Board adopted amendments to Section 120 (York River Basin) on 11/15/05. The rulemaking to assign nutrient WLAs did give consideration to some facilities that were actively expanding at the time from "non-significant" to "significant" status, usually conditioned on having a Certificate to Operate (CTO) for the higher design flow by 12/31/10. The plants receiving conditional allocations informed DEQ during the rulemaking of their expansion plans and provided reasonable assurance that the CTO would be secured by the deadline. Louisa County did not provide such notification at the time, but has now petitioned the Board for allocations for their proposed expansion to 0.7 MGD, which the County claims will be operational by May 2009.

Legal basis

Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly

chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

State mandate in § 62.1-44.15(10) of the Code of Virginia is the source of legal authority identified to promulgate these amendments. The promulgating entity is the State Water Control Board.

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. The State Water Control Law (Code of Virginia) at § 62.1-44.15(10) mandates the Board to adopt such regulations as it deems necessary to enforce the general water quality management program of the Board in all or part of the Commonwealth. In addition, § 62.1-44.15(14) requires the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes that are consistent with the purposes of this chapter. Setting the specific effluent limits needed to meet the water quality goals is within the discretion of the Board.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments being considered are modifications of the current requirements for the treatment of wastewater that will contribute to the protection of Virginia's water quality. State Water Control Law (Code of Virginia) web site: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+62.1-44.15>.

Need

Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.

Necessary and appropriate nutrient allocations are essential to protect the health, safety and welfare of citizens by ensuring protection of water quality in the York River Basin as well as the Chesapeake Bay.

The following issues were raised during the public comment period on the petition and will be addressed during the regulatory process: (i) assignment of WLAs should be based on a facility's "permitted design capacity" as of 7/1/05; (ii) the Commonwealth has already authorized WLAs for the Chesapeake Bay watershed exceeding nutrient pollution loads allowed by the tributary strategies. . .it is essential that only those petitions that contain adequate justification are granted; (iii) the needs of a rapidly growing sewer service area and the anticipated facility expansion must be considered along with protection of water quality. . .equity requires this petition be granted based on the same basis as prior authorizations for other permitted "significant" facilities.

Substance

Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.

As presented by the petitioner, amend Nutrient Waste Load Allocations in the Water Quality Management Planning Regulation, 9 VAC 25-720-120.C. (York River Basin), to add the Louisa County-Zion Crossroads WWTP (VPDES # VA0090743), assigning a Total Nitrogen waste load allocation of 12,795 pounds per year and a Total Phosphorus waste load allocation of 1,492 pounds per year.

In addition to these revisions, if the petition is approved, then increases would be made to the York total basin TN waste load allocation from 1,079,212 to 1,092,007 pounds per year, and the total basin TP waste load allocation from 175,601 to 177,093 pounds per year.

Alternatives

Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.

The following are alternatives for consideration but DEQ staff will work in conjunction with a Technical Advisory Group, the petitioner, and other state and federal agencies (as appropriate) to find other alternatives. Alternatives provided by the public will also be considered.

Alternatives considered by the agency include, but are not limited to, the following:

- Approve revised allocations as requested in the petition. These would likely be conditional and subject to the owner securing a Certificate to Operate for the expanded design flow by 12/31/10.
- Deny the petition and leave the nutrient waste load allocations as currently listed in 9 VAC 25-720. The owner would have to rely on other options to meet the plant's permitted design capacity, such as use of the Nutrient Credit Exchange Program (authorized under VA Code § 62.1-44.19:12 through 19:19), installation of more stringent nutrient reduction technology, or some combination of options.

Public participation

Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives, 3) potential impacts of the regulation and 4) impacts of the regulation on farm and forest land preservation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so at the public meeting or by mail, email or fax to John Kennedy, DEQ Chesapeake Bay Program, P.O. Box 1105, Richmond VA 23218; phone - 804-698-4312; fax – 804-698-4116; jmkennedy@deq.virginia.gov. Comments may also be submitted through the Public Forum feature of the Virginia Regulatory Town Hall web site at: www.townhall.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by 5:00 p.m. on the last day of the public comment period.

A public meeting will be held and notice of the meeting may be found on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov). Both oral and written comments may be submitted at that time.

Participatory approach

Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.

The Board is using the participatory approach to develop a proposal. Persons interested in assisting in the development of a proposal should notify the department contact person by the end of the comment period and provide their name, address, phone number, email address and the organization you represent (if any). Any persons who want to be on the advisory committee are encouraged to attend the public meeting mentioned above. The primary function of the advisory committee is to develop recommended regulation amendments for Department consideration through the collaborative approach of regulatory negotiation and consensus. Multi-applications from a single company, organization, group or other entity count as one for purposes of making the decision specified in the preceding sentence. Notification of the composition of the advisory committee will be sent to all applicants.

Family impact

Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

The direct impact resulting from the assignment of waste load allocations limiting the discharge of total nitrogen and total phosphorus from wastewater treatment plants is for the protection of public health and safety. The adoption or amendment of these limitations may increase the cost of wastewater treatment at publicly owned treatment works, thereby increasing the user charges paid by residential and commercial customers, potentially decreasing the disposable family income.