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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary action: 9VAC25-900
VAC Chapter title(s)	Certification of Nonpoint Source Nutrient Credits
Action title	Certification of Nonpoint Source Nutrient Credits - CH360
Final agency action date	June 29, 2021
Date this document prepared	May 19, 2021

Although a regulatory action may be exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the *Code of Virginia*, the agency is still encouraged to provide information to the public on the Regulatory Town Hall using this form. However, the agency may still be required to comply with the Virginia Register Act, Executive Order 14 (as amended, July 16, 2018), the Regulations for Filing and Publishing Agency Regulations (1VAC7-10), and the *Form and Style Requirements for the Virginia Register of Regulations and Virginia Administrative Code*.

Brief Summary

Provide a brief summary (preferably no more than 2 or 3 paragraphs) of this regulatory change (i.e., new regulation, amendments to an existing regulation, or repeal of an existing regulation). Alert the reader to all substantive matters. If applicable, generally describe the existing regulation.

This amendment to the regulation for Certification of Nonpoint Source Nutrient Credits (9VAC25-900) is necessary in order to meet a legislative mandate. This change allows any facility that is issued a VPDES permit regulating stormwater discharges that requires nitrogen and phosphorus monitoring at the facility to acquire, use, and transfer credits for compliance with any wasteload allocations established as effluent limitations in their VPDES permit.

Mandate and Impetus

Identify the mandate for this regulatory change and any other impetus that specifically prompted its initiation (e.g., new or modified mandate, internal staff review, petition for rulemaking, periodic review, or board decision). "Mandate" is defined as "a directive from the General Assembly, the federal government, or a court that requires that a regulation be promulgated, amended, or repealed in whole or part."

The Commonwealth's mandate in § 62.1-44.15(10) of the Code of Virginia is the source of legal authority identified to promulgate this amendment.

Promulgating Entity

The promulgating entity for this amendment is the State Water Control Board.

State Requirements

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. Setting the specific effluent limits needed to meet the water quality goals is within the purview of the Board.

The Code of Virginia § 62.1-44.19:20 authorizes the State Water Control Board to adopt regulations for the purpose of establishing procedures for the certification of point source nutrient credits. Subsection D provides that the Department of Environmental quality shall establish and maintain an online Virginia Nutrient Credit Registry of credits.

Section 62.1-44.19:21 of the Code of Virginia § 62.1-44.19:21 provides that stormwater permittees may acquire, use, and transfer nutrient credits for purposes of compliance with any waste load allocations established as effluent limitations in those permits.

The 2021 Acts of Assembly Special Session I, Chapter 360 revised the Code of Virginia § 62.1-44.19:21 subsection D to allow facilities that are issued a VPDES permit regulating stormwater discharges that requires nitrogen and phosphorus monitoring at the facility to acquire, use, and transfer credits for compliance with any wasteload allocations. This provision previously only applied to facilities registered under the Industrial Stormwater General Permit (9VAC25-151).

Federal Requirements

There is no applicable federal law or regulation requiring adoption of this amendment.

Statement of Final Agency Action

Provide a statement of the final action taken by the agency including: 1) the date the action was taken; 2) the name of the agency taking the action; and 3) the title of the regulation.

On June 29, 2021, the State Water Control Board took final action to adopt amendments to the regulation for Certification of Nonpoint Source Nutrient Credits (9VAC25-900). This regulatory action is to be effective as provided in the Administrative Process Act.

The regulation amendments are exempt from the state administrative procedures for adoption of regulations contained in Article 2 of the Administrative Process Act by the provisions of § 2.2-4006 A 4 a of the Administrative Process Act because they are necessary to meet the requirements of Virginia statutory law where no agency discretion is involved.

In adopting these amendments, the board affirmed that it will receive, consider and respond to petitions by any person at any time with respect to reconsideration or revision, as provided in § 2.2-4006 B of the Administrative Process Act.