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Exempt Action Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) citation(s)	9VAC25-820
Regulation title(s)	General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
Action title	Amend and Reissue the Existing Regulation
Final agency action date	December 12, 2016
Date this document prepared	November 18, 2016

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA) or an agency's basic statute, the agency is not required, however, is encouraged to provide information to the public on the Regulatory Town Hall using this form. Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, Executive Orders 17 (2014) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

Brief summary

Please provide a brief summary of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

This action consists of the reissuance of 9 VAC25-820 General VPDES Watershed Permit for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia. The regulation provides for the permitting of Total Nitrogen and Total Phosphorus discharges in the Chesapeake Bay watershed and allows for trading of nutrient credits to minimize costs to the regulated facilities and allow for future growth.

Amendments are proposed to update and clarify definitions, effective dates, monitoring frequencies and sample types, quantification level requirements, trading ratio provisions, new waste load allocations for some facilities as required by the December 29, 2010 Chesapeake Bay TMDL with associated compliance schedule requirements and conditions applicable to all VPDES permits.

Acronyms and definitions

Please define all acronyms used in the Agency Background Document. Also, please define any technical terms that are used in the document that are not also defined in the "Definition" section of the regulations.

BMP: Best Management Practice
CFR: Code of Federal Regulations
CWA: Clean Water Act
DEQ: Department of Environmental Quality
DMR: Discharge Monitoring Report
DO: Dissolved Oxygen
EPA (U.S. EPA): United States Environmental Protection Agency
FWW: Food & Water Watch
GP: General Permit
HRSD: Hampton Roads Sanitary District
LA: Load Allocation
lbs/yr: pounds per year
MGD: Millions of Gallons per Day
mg/L: milligram per liter
mlbs/yr: million pounds per year
NASA: National Aeronautics and Space Administration
NPDES: National Pollutant Discharge Elimination System
NPS: Non-point Source
PRKN: Potomac River Keeper Network
QL: Quantification Level
PS: Point Source
RAP: Regulatory Advisory Panel
STP: Sewage Treatment Plant
TAC: Technical Advisory Committee
TKN: Total Kjeldahl Nitrogen
TMDL: Total Maximum Daily Load
TN: Total Nitrogen
TP: Total Phosphorus
USC: United States Code
USGS: United States Geological Survey
VAC: Virginia Administrative Code
VAMWA: Virginia Association of Municipal Wastewater Agencies
VMA: Virginia Manufacturers Association
VPDES: Virginia Pollutant Discharge Elimination System
WIP: Watershed Implementation Plan
WLA: Waste Load Allocation
WTF: Wastewater Treatment Facility
WQS: Water Quality Standard
WWTP: Wastewater Treatment Plant

Statement of final agency action

Please 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 December 12, 2016, the State Water Control Board amended the General Virginia Pollutant Discharge Elimination System Watershed General Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia.

Family impact

Please assess the impact of this 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.

This regulation will have no direct impact on the institution of the family or family stability.

Changes made since the proposed stage

Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar's office, please put an asterisk next to any substantive changes.

Section number	Requirement at proposed stage	What has changed	Rationale for change
70 Part III C	C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the board request that the permittee submit monitoring results, the following subdivisions apply.	C. Reporting monitoring results. [Monitoring results under this permit are not required to be submitted to the department. However, should the board request that the permittee submit monitoring results, the following subdivisions apply.]	Removed boilerplate language inadvertently used during development of regulation
80	The facilities identified in this section are subject to reduced individual total nitrogen and total phosphorus waste load wasteload allocations as indicated.	The <u>[James River]</u> facilities identified in this section are subject to reduced individual total nitrogen and total phosphorus waste load wasteload allocations as indicated.	Added <u>[James River]</u> in response to a comment and to clarify that only James River facilities were subject to the detailed WLA reductions.
70.I.E.1	Sample collection frequencies were modified to require more frequent sampling at certain facilities. A new sampling frequency of " <u>2Week</u> " was established for facilities designed to discharge between 5.0 and 19.999 Million Gallons per Day	Sample collection frequencies were further modified to require more frequent sampling at facilities. Sampling frequencies of <u>2 Days/Week</u> are established for facilities designed to discharge between 0.5 and 19.999 MGD or the industrial load equivalent. ** Two flow composited samples taken in the same calendar week which are	Changes were made in response to an objection to the proposed permit by the EPA which required that facilities discharging more than 0.5 MGD collect a minimum of two composite samples per week.

	<p>(MGD). A new sampling frequency of <u>"4/Month**"</u> was established for facilities designed to discharge between 0.5 and 0.999 MGD. These increased monitoring frequencies were made to more accurately quantify the annual nutrient loads from these facilities and to reflect the minimum monitoring frequency typically necessary for process control. In order to minimize any increase in laboratory analysis costs, the following footnotes to the new monitoring frequencies have been included:</p> <p><u>** Two 24-hour flow composited samples taken in the same calendar week which are then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement.</u></p> <p><u>** Two sets of two 8-hour flow composited samples taken at least one day apart but in the same calendar week which are then composited by flow into two weekly composite samples per month for analysis shall be considered to be in compliance with this requirement."</u></p>	<p>then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement.</p>	
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Public Comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

The following comments were provided during the December 14, 2015 through February 12, 2016 public comment period.

Commenter	Comment	Agency response
Pamela F. Faggert – Dominion Resources Services, Inc.	Dominion supports the condition that facilities may request "alternative sample types" when discharges demonstrate minor variation in flow.	N/A

<p>Pamela F. Faggert – Dominion Resources Services, Inc.</p>	<p>Dominion supports the proposed potential <2:1 trading ratios between non-point and point sources</p>	<p>N/A</p>
<p>Pamela F. Faggert – Dominion Resources Services, Inc.</p>	<p>Dominion supports non-significant discharges being eligible to generate credits and participate in the trading program</p>	<p>N/A</p>
<p>Pamela F. Faggert – Dominion Resources Services, Inc.</p>	<p>Dominion states that the waste load allocation (WLA) option chosen during the technical advisory committee (TAC) meetings was not the option presented in the proposed general permit (GP).</p>	<p>Three nutrient reduction alternatives were presented during TAC meetings and consensus was not reached by the TAC membership. After receiving comment from facilities which analyzed their ability to comply with the proposed nutrient reduction alternatives, DEQ determined the most equitable alternative that would least affect dischargers was “Alternative #1”. Alternative #1 would apply an additional 18.9% total phosphorus reduction to all facilities except the Tyson Food and Chickahominy wastewater treatment plants. Based on historical TP data reviewed by DEQ, Alternative #1 would not result in immediate new non-compliance for any affected facilities.</p>
<p>Pamela F. Faggert – Dominion Resources Services, Inc.</p>	<p>Dominion requests any WLA changes made due to the pending James River Chlorophyll-a study be made in “full consultation” with stakeholders</p>	<p>Any proposed WLA changes would be considered as amendments to the Water Quality Management Planning Regulation (9 VAC25-720) which would include all pertinent elements of Virginia’s Administrative Process Act</p>
<p>Andrea W. Wortzel and Brooks M. Smith Counsel to the Virginia Manufacturers Association Water Subcommittee</p>	<p>Virginia Manufacturers Association (VMA) members were surprised that Virginia Department of Environmental Quality (DEQ) apparently chose a different alternative than what was decided during TAC meetings. VMA is concerned that the DEQ’s decision to go forward with a different alternative sets a precedent without full disclosure and TAC consensus.</p>	<p>Three nutrient reduction alternatives were presented during TAC meetings and consensus was not reached by the TAC membership. After receiving comment from facilities which analyzed their ability to comply with the proposed nutrient reduction alternatives, DEQ determined the most equitable alternative that would least affect dischargers was “Alternative #1”. Alternative #1 would require additional 18.9% total phosphorus (TP) reduction to all facilities except the Tyson Food and Chickahominy wastewater treatment plants. Based on historical TP data reviewed by DEQ, Alternative #1 would not result in immediate new non-compliance for any affected facilities.</p>
<p>Andrea W. Wortzel and Brooks M. Smith Counsel to the Virginia Manufacturers Association Water Subcommittee</p>	<p>VMA stated that DEQ should use a “robust TAC process” if any changes to allocations are necessary due to the pending Chlorophyll-a study</p>	<p>Any proposed WLA changes would be considered as amendments to the Water Quality Management Planning Regulation (9 VAC25-720) which would include all pertinent elements of Virginia’s Administrative Process Act</p>
<p>Andrea W. Wortzel and Brooks M. Smith Counsel to the Virginia Manufacturers Association Water Subcommittee</p>	<p>An across-the-board reduction in WLA will likely have a greater financial impact on manufacturers due to the nature of their treatment systems, lack of being able to levy rate increases, and no access to funding such as the Water Quality Improvement Fund.</p>	<p>Three nutrient reduction alternatives were presented during TAC meetings and consensus was not reached by the TAC membership. After receiving comment from facilities which analyzed their ability to comply with the proposed nutrient reduction alternatives, DEQ determined the most equitable alternative that would least affect dischargers was “Alternative #1”. Alternative #1 would require</p>

		additional 18.9% total phosphorus (TP) reduction to all facilities except the Tyson Food and Chickahominy wastewater treatment plants. Based on historical TP data reviewed by DEQ, Alternative #1 would not result in immediate new non-compliance for any affected facilities.
Andrea W. Wortzel and Brooks M. Smith Counsel to the Virginia Manufacturers Association Water Subcommittee	VMA believes increased sampling frequency in proposed permit is unnecessary as DEQ has authority in permit to request additional sampling if there is an indication that sampling is not capturing a non-representative load.	Sampling frequency was increased in an effort to more accurately determine discharged loads and monitor process control. Sampling requirements were discussed extensively in the TAC without the group reaching consensus. Costs associated with the increases in sampling frequency for smaller facilities were taken into consideration during the development of this regulation. DEQ believes the costs may be partially off-set by the provision allowing for the weekly compositing of samples to minimize the additional laboratory costs. The proposed increase in sampling frequency represents a compromise between the economic interests of the permittees and EPA insistence on a minimum monitoring frequency of 3 samples per week.
Andrea W. Wortzel and Brooks M. Smith Counsel to the Virginia Manufacturers Association Water Subcommittee	VMA suggests facilities with discharge flows that vary <10% should be exempt from proposed increases in sampling frequency and that this measure should be extended to facilities with discharge flows that vary <20%.	The increase in monitoring frequency requested by EPA and debated extensively in the technical advisory committee meetings was intended to increase reliability in measuring nutrient loads. Allowing facilities to opt out of the increased monitoring requirements on the basis of flow alone would ignore the variability in load introduced by treatment efficiency and pollutant concentrations. No changes were made in response to this comment.
Andrea W. Wortzel and Brooks M. Smith Counsel to the Virginia Manufacturers Association Water Subcommittee	VMA supports the inclusion of nitrogen quantitation limits (QLs) in proposed permit.	N/A
Andrea W. Wortzel and Brooks M. Smith Counsel to the Virginia Manufacturers Association Water Subcommittee	VMA supports the provision of non-point to point source trading with potential trading ratios of <2:1	N/A
Ted Henifin - Virginia Association of Municipal Wastewater Agencies, Inc.	Virginia Association of Municipal Wastewater Agencies (VAMWA) supports the proposed DEQ plan to base sampling frequency on a facility's design flow but remains concerned about the lack of technical basis for increased sampling frequency as presented in the United States Environmental Protection Agency (EPA) statistical analysis report.	N/A
Ted Henifin - Virginia Association of Municipal Wastewater Agencies, Inc.	VAMWA would like the "half quantifications level" reporting method eliminated and believes the related increase in consistency and efficiency would outweigh the value of estimating nutrient loads with below QL results.	DEQ believes the current calculation method utilizing half quantification limits presents a conservative and protective means to estimate nutrient loads

<p>Ted Henifin - Virginia Association of Municipal Wastewater Agencies, Inc.</p>	<p>VAMWA supports the provision of non-point to point source trading with potential trading ratios of <2:1</p>	<p>N/A</p>
<p>Ted Henifin - Virginia Association of Municipal Wastewater Agencies, Inc.</p>	<p>VAMWA supports DEQ's intent to make any changes to delivery factors in the fifth year of the proposed permit cycle so as to not disrupt nutrient trades and compliance plans.</p>	<p>N/A</p>
<p>Ted Henifin - Virginia Association of Municipal Wastewater Agencies, Inc.</p>	<p>VAMWA supports the "equal percentage approach" to WLA reductions.</p>	<p>N/A</p>
<p>Jamie S. Heisig-Mitchell - Hampton Roads Sanitation District</p>	<p>Hampton Roads Sanitation District (HRSD) supports the equitable 18.9% WLA reduction for all James River dischargers.</p>	<p>N/A</p>
<p>Jamie S. Heisig-Mitchell - Hampton Roads Sanitation District</p>	<p>HRSD supports the delineation of sampling frequency by facility flow design size, but does not agree with the technical basis for increased sampling frequency.</p>	<p>Sampling frequency was increased in an effort to more accurately determine discharged loads and monitor process control. Sampling requirements were discussed extensively in the TAC without the group reaching consensus. Costs associated with the increases in sampling frequency for smaller facilities were taken into consideration during the development of this regulation. DEQ believes the costs may be partially off-set by the provision allowing for the weekly compositing of samples to minimize the additional laboratory costs. The proposed increase in sampling frequency represents a compromise between the economic interests of the permittees and EPA insistence on a minimum monitoring frequency of 3 samples per week.</p>
<p>Jamie S. Heisig-Mitchell - Hampton Roads Sanitation District</p>	<p>HRSD supports the proposed nitrogen species QLs.</p>	<p>N/A</p>
<p>Jamie S. Heisig-Mitchell - Hampton Roads Sanitation District</p>	<p>HRSD supports the inclusion of potential non-point to point source trades at ratios <2:1</p>	<p>N/A</p>
<p>Jamie S. Heisig-Mitchell - Hampton Roads Sanitation District</p>	<p>HRSD suggested general edits to the proposed regulation and associated fact sheet and registration lists. The edits were related to the presentation of individual versus aggregate WLAs.</p>	<p>DEQ considered all suggested edits and included the wording "James River" in section 80. Edits to the registrations lists and fact sheet are outside the scope of this regulation. DEQ has chosen to retain the individual WLAs for transparency reasons. The individual presentation of WLAs for the permittee does not impact compliance or the ability to trade.</p>

Tarah Heinzen - Food & Water Watch	Food & Water Watch (FWW) is opposed to the proposed GP because the Clean Water Act (CWA) does not authorize water pollution trading to meet a WLA.	Issuance of the watershed general permit with provisions for trading is required under Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia
Tarah Heinzen - Food & Water Watch	FWW believes “bubble permits”, as allowed in the proposed GP, are “illegal”.	Bubble permits are allowed under Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia
Tarah Heinzen - Food & Water Watch	FWW is opposed to the proposed GP because authorized trading will lead to “pollution hotspots and degradation of water quality”.	Prohibition of local water quality impacts is included in 9VAC25-820-30.B as well as in Part I.B.2.d, Part I.J.2.c, Part I.J.3.c, and Part II.B.2.c of the proposed GP.
Tarah Heinzen - Food & Water Watch	FWW does not support the proposed provision that non-point source to point source trades could potentially be approved at trading a trading ratio of <2:1 due to uncertainty and a lack of verification and enforceability.	Typically non-point source BMPs and their nutrient removal efficiencies are established by expert panel reviews utilizing protocols set by the Chesapeake Bay Program partnership. These protocols were designed so that expert panel reviews were conducted in a manner that is unbiased and arrives at realistic and conservative removal efficiencies. EPA also recognizes in their technical memorandum, <i>Accounting for Uncertainty in Offset and Trading Programs</i> , that trading ratios <2:1 may be appropriate for certain non-point source nutrient removal projects.
Tarah Heinzen - Food & Water Watch	FWW opposes the proposed nutrient intake credit provision.	Currently one discharger has “net” WLAs recognized in the Water Quality Management Planning Regulation (9VAC25-720) however additional facilities may be covered under this provision in the future. This provision is particularly applicable to a facility that may use large amounts of cooling water without adding additional nutrients through the facility’s process prior to discharge.
Phillip Musegaas - Potomac Riverkeeper Network & Mark Frondorf - Shenandoah Riverkeeper	Potomac River Keeper Network (PRKN) supports comments made by FWW.	PRKN’s support of FWW’s comments has been noted by DEQ.
Phillip Musegaas - Potomac Riverkeeper Network & Mark Frondorf - Shenandoah Riverkeeper	PRKN asserts that the nutrient trading regime in the proposed GP does not comply with the CWA.	Issuance of the watershed general permit with provisions for trading is required under Title 62.1, Chapter 3.1, Article 4.02 of the Code of Virginia
Phillip Musegaas - Potomac Riverkeeper Network & Mark Frondorf - Shenandoah Riverkeeper	PRKN opposes the proposed GP because the GP “greenlights” facilities to exceed their WLAs and thus negatively impacts local water quality causing impairments.	Prohibition of local water quality impacts is included in 9VAC25-820-30.B as well as in Part I.B.2.d, Part I.J.2.c, Part I.J.3.c, and Part II.B.2.c of the proposed GP.

Phillip Musegaas - Potomac Riverkeeper Network & Mark Frondorf - Shenandoah Riverkeeper	PRKN is opposed to trading ratios of non-point source to point source <2:1 due to DEQ not justifying the need for such a provision and a lack of verification and tracking.	Typically non-point source BMPs and their nutrient removal efficiencies are established by expert panel reviews utilizing protocols set by the Chesapeake Bay Program partnership. These protocols were designed so that expert panel reviews were conducted in a manner that is unbiased and arrives at realistic and conservative removal efficiencies. EPA also recognizes in their technical memorandum, Accounting for Uncertainty in Offset and Trading Programs, that trading ratios <2:1 may be appropriate for certain non-point source nutrient removal projects.
Phillip Musegaas - Potomac Riverkeeper Network & Mark Frondorf - Shenandoah Riverkeeper	PRKN supports the inclusion of a public notice requirement for potential trades of <2:1 ratios, but believes the public notice requirement should be more robust than the current DEQ system	DEQ will follow all public notice requirements as determined by applicable code, regulation, and guidance
Phillip Musegaas - Potomac Riverkeeper Network & Mark Frondorf - Shenandoah Riverkeeper	PRKN asserts that it should be clear in the proposed GP that non-significant dischargers utilize nutrient reduction techniques at least equal to significant facilities prior to generating credits	There is no minimum technology requirement for the generation of nutrient credits for significant or nonsignificant facilities. The generation of point source nutrient credits under the watershed general permit are consistent with the requirements in the State Water Control Law at §62.1-44.19:13.
Phillip Musegaas - Potomac Riverkeeper Network & Mark Frondorf - Shenandoah Riverkeeper	PRKN states that they would like the proposed GP revised to include greater transparency and tracking of nutrient trades.	The DEQ is dedicated to transparency in our programs. DEQ publishes a list of annual nutrient loads discharged and a nutrient trades report on the Department's website as required in §62.1-44.19:18.
Jon M. Capacasa – EPA Region III – Director, Water Protection Division	EPA Region III has filed an objection to the proposed GP based on their statistical analysis of sampling frequency.	DEQ staff has developed revisions (9VAC25-820 Part I) to the proposed watershed general permit to address EPA's objection. These revisions were subject to a comment period as outlined above.

The following comments were provided during the October 11, 2016 through November 10, 2016 public comment period.

Commenter	Comment	Agency response
Bryan Horton- Operator in Charge- Onancock WWTP	Mr. Horton states that the proposed increased sampling frequency and sampling type will have a negative effect on his facility due to limited funds.	DEQ staff is aware of the potential financial burden associated with the revisions made to the proposed general permit. The increased sampling frequencies were included to address the EPA's objection to the proposed general permit.
Jim Hoy, PE – Director of Public Services – Town of Culpeper; Amy R. Wyks, PE – Director of Utilities- Town of Leesburg; Steven P. Herzog, PE- Director Department of Public Utilities – Hanover County;	Although these commenters generally support the reissuance of the general permit, they disagree with the increased monitoring frequencies DEQ has proposed to satisfy EPA's objection to the general permit. Instead the commenters support the monitoring frequencies developed during the TAC process which included DEQ's approval and EPA's participation. The commenters express that these comments are in agreement with comments provided by the Virginia	DEQ staff recognizes the concerns presented by the commenters. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.

<p>Edward G. Henifin, PE – General Manager – HRSD; Michael E. Ward, PE- Director- Henry County; Public Service Authority; Tom Saunders, Town Manager and Director of Public Utilities – Town of Kilmarnock; Paul Howard, Jr- Director of Environmental Services – Culpeper County; Dale C. Hammes, PE- General Manager – Loudon Water; Pamela S. Baughman – General Manager- Louisa County Water Authority; George B. Hayes, PE- Director of Utilities- Chesterfield County; R. Clarke Wallcraft – Executive Director – Pepper’s Ferry Regional Wastewater Treatment Authority; Dudley M. Pattie – General Manager – Rapidan Service Authority; Gerard W. Higgins, PE- Executive Director- Maury Service Authority; Don Riggleman- Water Supply and Wastewater Treatment Division Manager- City of Winchester</p>	<p>Association of Municipal Wastewater Agencies.</p>	
<p>Jim Hoy, PE – Director of Public Services – Town of Culpeper; Amy R. Wyks, PE – Director of Utilities- Town of Leesburg; Steven P. Herzog, PE-</p>	<p>The commenters emphasize that they agree with DEQ’s earlier finding that EPA’s request lacks a proper technical basis. The commenters are concerned that EPA is acting inconsistently by imposing “wasteful” monitoring requirements in Virginia that do not apply nationwide. The commenters state that it is unfortunate that EPA is</p>	<p>DEQ staff recognizes the concerns presented by the commenters. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>

<p>Director Department of Public Utilities – Hanover County; Edward G. Henifin, PE – General Manager – HRSD; Michael E. Ward, PE- Director- Henry County Public Service Authority; Tom Saunders, Town Manager and Director of Public Utilities – Town of Kilmarnock; Paul Howard, Jr- Director of Environmental Services – Culpeper County; Dale C. Hammes, PE- General Manager – Loudon Water; Pamela S. Baughman – General Manager- Louisa County Water Authority; George B. Hayes, PE- Director of Utilities- Chesterfield County; R. Clarke Wallcraft – Executive Director – Pepper’s Ferry Regional Wastewater Treatment Authority; Dudley M. Pattie – General Manager – Rapidan Service Authority; Gerard W. Higgins, PE- Executive Director- Maury Service Authority; Don Riggleman- Water Supply and Wastewater Treatment Division Manager- City of Winchester</p>	<p>choosing to prioritize limited resources to increased effluent monitoring that they believe provides “no value” to water quality efforts.</p>	
<p>Clarke Wallcraft – Executive Director – Pepper’s Ferry Regional Wastewater</p>	<p>Although Mr. Wallcraft’s facility is not within the Chesapeake Bay Watershed and is not a general permittee, he is concerned that EPA’s assertion that DEQ increase monitoring frequency will</p>	<p>DEQ staff recognizes the concerns presented by Pepper’s Ferry Regional Wastewater Authority. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>

<p>Treatment Authority</p>	<p>lead to increased monitoring frequencies at his facility.</p>	
<p>Christopher D. Pomeroy – General Counsel- Virginia Association of Municipal Wastewater Agencies</p>	<p>VAMWA was surprised by EPA’s late reversal of its apparent acceptance of monitoring frequency compromises reached during the TAC process in which EPA participated. While VAMWA did not find the TAC increased sampling frequency compromises to be technically warranted, VAMWA accepted the increases as a middle ground. VAMWA states that the increased sampling frequencies are not technically justified and have the effect of increasing ratepayers’ cost of service with no meaningful benefit.</p>	<p>DEQ staff recognizes the concerns presented by VAMWA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>
<p>Christopher D. Pomeroy – General Counsel- Virginia Association of Municipal Wastewater Agencies</p>	<p>VAMWA has reviewed EPA’s objection, EPA’s statistical evaluations, and DEQ’s response to EPA’s objection. VAMWA concurs with DEQ’s response and that increased monitoring frequencies are unnecessary. VAMWA found that EPA provided no valid technical or legal basis for its disapproval as both EPA statistical evaluations are lacking in rigorous science and statistically valid analysis.</p>	<p>DEQ staff recognizes the concerns presented by VAMWA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>
<p>Christopher D. Pomeroy – General Counsel- Virginia Association of Municipal Wastewater Agencies</p>	<p>VAMWA provided technical comments on EPA’s 2014 statistical evaluation that was presented by EPA as a technical basis of their objection to the general permit. VAMWA’s technical comments include:</p> <ul style="list-style-type: none"> • EPA “assessed” post treatment loads from only two plants, one in Alexandria, Virginia and one in Harrisburg, Pennsylvania • EPA concluded “this assessment, in combination with concerns about preferential sampling, indicates that three or more samples per week are likely to decrease error below five percent for both TN and TP, even where preferential sampling is in use”. This conclusion was not substantiated by the available data. • Of the five data sets considered, two were sufficient to meet the objective (less than five percent difference) when sampling only once per week, two were sufficient when sampling twice per week, and only one case required sampling three times per week to meet the objective. • EPA failed to look at the average result of the combined data sets 	<p>DEQ staff recognizes the concerns presented by VAMWA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>

	<p>and only considered the data sets individually.</p> <ul style="list-style-type: none"> • VAMWA points out the issue should not be whether a single datum point meets the objective, but whether the average of all values in the data set is within the 5 percent objective. 	
<p>Christopher D. Pomeroy – General Counsel- Virginia Association of Municipal Wastewater Agencies</p>	<p>VAMWA provided technical comments on EPA’s 2016 statistical evaluation that was presented by EPA as the technical basis of their objection to the general permit. VAMWA’s technical comments include:</p> <ul style="list-style-type: none"> • EPA focused the evaluation on the “worst” monthly statistical properties of Virginia data, rather than an overall evaluation. VAMWA found this to be “odd” and not designed to provide useful information. • The evaluation only demonstrates that some facilities sometimes experience monthly loads that are higher than their average monthly loads, which is to be expected given normal effluent variability. VAMWA states that if anything EPA’s analysis demonstrates that the variability observed in the evaluation demonstrates that variability can be detected at the existing sampling frequencies, which is counter to the point which EPA was trying to make. • EPA’s evaluation included no analysis that would justify that two samples per week are needed and instead is designed to answer whether effluent loads remain constant. 	<p>DEQ staff recognizes the concerns presented by VAMWA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>
<p>Christopher D. Pomeroy – General Counsel- Virginia Association of Municipal Wastewater Agencies</p>	<p>VAMWA provides that a parametric statistical analysis would better quantify the uncertainty in loading estimates as a function of sampling frequency. VAMWA presents the following parametric approach rationale:</p> <ul style="list-style-type: none"> • Assume that daily loading estimates are lognormally distributed (a common assumption in NPDES permitting) • Uses available data to calculate the distribution parameters for individual facilities. • Uses the distributional statistics to quantify the uncertainty in annual loads from both individual facilities and for aggregate loads as a function of sampling frequency 	<p>DEQ staff recognizes the concerns presented by VAMWA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>

<p>Christopher D. Pomeroy – General Counsel- Virginia Association of Municipal Wastewater Agencies</p>	<p>VAMWA states that other sources of conservativeness should cause agencies to avoid excessive sampling frequencies.</p> <ul style="list-style-type: none"> • USGS estimates fall line loadings are accurate to within 10% for total nitrogen and 20% total phosphorus • The Chesapeake Bay TMDL establishes allocations as “average annual load over the 10-year hydrologic period”. VAMWA points out that that annual allocations in the general permit are conservative because facilities have to attain loads annually and not as a 10-year average • For many of Virginia’s basins, the delivered nutrient loads are substantially less than the basin’s WLA, and are projected to remain so for at least the next five-year permit term. 	
<p>Christopher D. Pomeroy – General Counsel- Virginia Association of Municipal Wastewater Agencies</p>	<p>VAMWA adds that EPA has approved lower sampling frequencies elsewhere:</p> <ul style="list-style-type: none"> • EPA Region 10 issued a permit for the City of Aberdeen, Idaho’s WWTP (0.82 MGD) which includes 1/week grab samples for total phosphorus • EPA Region 1 approved Connecticut’s General Permit for Nitrogen Dischargers which requires a 1/week 24-hr composite sample for discharges less than 10 MGD. • VAMWA contends that EPA’s approach is unfair to Virginia “can only be described as arbitrary”. 	<p>DEQ staff recognizes the concerns presented by VAMWA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>
<p>Christopher D. Pomeroy – General Counsel- Virginia Association of Municipal Wastewater Agencies</p>	<p>VAMWA points out that facilities identified by EPA as having “high variability” routinely discharge well below their permit limits.</p>	<p>DEQ staff recognizes the concerns presented by VAMWA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>
<p>Christopher D. Pomeroy – General Counsel- Virginia Association of Municipal Wastewater Agencies</p>	<p>VAMWA states that EPA places an emphasis on preventing “cheating”. VAMWA supports appropriate record-keeping, demonstrating proper facility operation, and is not aware of and would not condone cheating. VAMWA contends that increased sampling frequency would not stop “cheating” or collecting biased samples.</p>	<p>DEQ staff recognizes the concerns presented by VAMWA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>

<p>Christopher D. Pomeroy – General Counsel-Virginia Association of Municipal Wastewater Agencies</p>	<p>VAMWA states that they support the compromises that DEQ developed during the TAC process which required the following sampling frequencies from dischargers:</p> <table border="1" data-bbox="418 342 844 514"> <thead> <tr> <th>Design Capacity(MGD)</th> <th>Frequency</th> </tr> </thead> <tbody> <tr> <td>5.0 to 19.999</td> <td>2/week (24 HC)</td> </tr> <tr> <td>1.0 to 4.999</td> <td>1/week (24 HC)</td> </tr> <tr> <td>0.50 to 0.999</td> <td>4/month (8 HC)</td> </tr> <tr> <td>0.040 to 0.499</td> <td>2/month (8 HC)</td> </tr> </tbody> </table>	Design Capacity(MGD)	Frequency	5.0 to 19.999	2/week (24 HC)	1.0 to 4.999	1/week (24 HC)	0.50 to 0.999	4/month (8 HC)	0.040 to 0.499	2/month (8 HC)	<p>DEQ staff recognizes the concerns presented by VAMWA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>
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<p>Andrea W. Wortzel & Brooks M. Smith – Counsel to the Virginia Manufacturers Association Water Subcommittee</p>	<p>VMA expresses concern that proposed revisions in monitoring requirements and associated increased monitoring costs will have an adverse effect on small dischargers only capable of selling small numbers of nutrient credits.</p>	<p>DEQ staff recognizes the concerns presented by VMA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>										
<p>Andrea W. Wortzel & Brooks M. Smith – Counsel to the Virginia Manufacturers Association Water Subcommittee</p>	<p>VMA comments that there is no need for increased monitoring requirements and will create monitoring inconsistencies between a facility's individual permit and the proposed general permit. VMA states that the increased sampling is particularly onerous for facilities between 0.5 and 0.999 MGD.</p>	<p>DEQ staff recognizes the concerns presented by VMA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit. However, DEQ staff clarified with EPA that the intent of the objection was to increase the sampling frequency of these facilities and not a change to sampling type. Facilities with a design flow of 0.5 to 0.999 MGD will be required to collect an 8-hr composite instead of the 24-hr composite. DEQ further revised the proposed increased sampling requirements to limit the inconsistencies between a facility's individual permit and the general permit.</p>										
<p>Andrea W. Wortzel & Brooks M. Smith – Counsel to the Virginia Manufacturers Association Water Subcommittee</p>	<p>VMA comments that facilities may not be aware of the proposed increase in monitoring frequencies and questions whether the DEQ will notify facilities of the increased monitoring.</p>	<p>DEQ staff completed a Notice of Public Comment for the revised monitoring requirements. DEQ staff also included the Notice of Public Comment in a mailing, using the most current contact information on file, to all general permittees.</p>										
<p>Andrea W. Wortzel & Brooks M. Smith – Counsel to the Virginia Manufacturers Association Water Subcommittee</p>	<p>VMA comments that the proposed increased sampling requirements are unnecessary as DEQ has the discretion under current permit language to require increased sampling frequencies if DEQ determines that existing sampling is capturing a representative load.</p>	<p>DEQ staff recognizes the concerns presented by VMA. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit.</p>										
<p>Andrea W. Wortzel & Brooks M. Smith – Counsel to the Virginia Manufacturers Association Water Subcommittee</p>	<p>VMA states that requiring facilities with design flows from 0.499 to 0.999 MGD to collect 24-hr composite samples twice per week instead of an 8-hr composite sample twice per month is unwarranted.</p>	<p>The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit. However, DEQ staff clarified with EPA that the intent of the objection was to increase the sampling frequency of these facilities and not a change to sampling type. Facilities with a design flow of 0.5 to 0.999 MGD will be required to collect an 8-hr composite instead of the 24-hr composite. DEQ further revised the proposed increased sampling requirements to limit the inconsistencies between a facility's individual permit and the general permit.</p>										

<p>Andrea W. Wortzel & Brooks M. Smith – Counsel to the Virginia Manufacturers Association Water Subcommittee</p>	<p>VMA comments that the proposed permit allows facilities that exhibit instantaneous discharge flows that vary by less than 10 percent to request alternative monitoring requirements. VMA proposes that facilities that meet this requirement should automatically be exempt from the proposed increased monitoring and that the provision should be increased to flows that vary less than 20 percent.</p>	<p>The increase in monitoring frequency requested by EPA and debated extensively in the technical advisory committee meetings was intended to increase reliability in measuring nutrient loads. Allowing facilities to opt out of the increased monitoring requirements on the basis of flow alone would ignore the variability in load introduced by treatment efficiency and pollutant concentrations. No changes were made in response to this comment.</p>
<p>Thomas H. Brown, Jr.- Superintendent- Luray Wastewater Treatment Plant</p>	<p>The commenter states that it is opposed to the revision to the proposed regulation that doubles sampling frequency even though this change would not increase the cost of testing since the two samples can be composited and submitted for laboratory analysis as one sample. The commenter does have concerns that this may in effect impair data quality due to the complexity of compositing the two samples and further states that submitting each sample individually would double the analytical costs.</p>	<p>DEQ staff recognizes the concerns presented by the commenter. The revisions made to the proposed general permit were necessary to have EPA remove the objection to the general permit. The provision in the proposed regulation allowing two composite samples to be further composited into one sample for laboratory analysis was placed in the proposed regulation in an attempt to reduce the financial burden placed on permittees. DEQ staff would like to point out that this provision is voluntary and samples may be submitted individually for laboratory analysis if permittees find that combining two samples into one composite sample is too complex.</p>
<p>Thomas H. Brown, Jr.- Superintendent- Luray Wastewater Treatment Plant</p>	<p>The commenter questions why Sewage Treatment Plant and Industrial Facility monitoring requirements are determined using design flow and load limits, respectively. The commenter points out that his facility last year discharged 366 lbs TP and 3,871 lbs TN at a design flow of 1.6 MGD and will be required to collect two 24-hr composite samples per week. In comparison an industrial facility that discharges 4,999 lbs TP and 49,999 lbs TN will only be required to collect two 8-hr composite samples per month. The commenter states that data should not be skewed one way or the other.</p>	<p>The intent for different Sewage Treatment Plant and Industrial Facility monitoring requirements was an attempt to reduce a portion of the financial burden from industrial facilities as they do not have rate-payers and cannot access funding from sources such as the Virginia Clean Water Revolving Loan Fund.</p>

All changes made in this regulatory action

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail new provisions and/or all changes to existing sections.

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
10		"Director" definition	Definition added to clarify the term for this permit regulation
10		"Tributary" definition	Definition modified to refer to Chesapeake Bay TMDL in accordance with current Code of Virginia.
10		Miscellaneous	Numerous grammatical changes made to provide clarity to

		definitions	definitions
	15		Added " <u>Applicability of incorporated references based on the dates that they became effective.</u> " This section was added to update all references to Title 40 Code of Federal Regulations (CFR) within the document to be those published as of July 1, 2014. This was a recommendation from the DEQ Office of Policy so that dates do not need to be added for each CFR reference
40.A		Required submittal of a compliance plan by 7/1/12 for facilities subject to reduced waste load allocations in the Chesapeake Bay TMDL and included in 9VAC25-820-80..	Requires submittal of a compliance plan by July 1, 2017 for facilities identified in 9VAC25-820-80 and subject to a limit effective date after January 1, 2017 as defined in 9-VAC25-820-70 I C 1. This change in combination with the changes in the sections referenced above requires a compliance plan from the Hampton Roads Sanitation District James River facilities for Total Nitrogen reductions identified in Virginia's Phase I Watershed Implementation Plan as well as Appendix X to the Chesapeake Bay TMDL.
40.A.3		Compliance plan reference to Water Quality Improvement Fund	"Water Quality Improvement Fund" replaced with " <u>Nutrient Offset Fund</u> " to reflect current state code (§10.1-2128.2)
70		Effective date of permit	Changed the effective (2017) and expiration (2021) dates to reflect the reissuance date of the permit.
70.I.A.3.		Continuation of permit coverage	Updated and made editorial changes as follows: <i>"a. Any owner authorized to discharge under this general permit and who submits a complete registration statement for the reissued general permit by November 1, 20162021, in accordance with Part III A or who is not required to register in accordance with Part I A 2 is authorized to continue to discharge under the terms of this general permit until such time as the board either:</i> <i>(1) Issues coverage to the owner under the reissued general permit, or</i> <i>(2) Notifies the owner that <u>the discharge is not eligible for coverage under the reissued this general permit is denied.</u></i> <i>b. When the owner that was covered under the expiring or expired general permit has violated or is violating the conditions of that permit, the board may choose to do any or all of the following:</i> <i>(1) Initiate enforcement action based upon the <u>2012 general permit that has been continued,</u></i> <i>(2) Issue a notice of intent to deny coverage under the amendedreissued general permit. if the general permit coverage is denied, the owner would then be required to cease the activitiesdischarges authorized by the <u>administratively continued coverage under the terms of the 2012 general permit</u> or be subject to enforcement action for operating without a permit, or</i> <i>(3) Take other actions authorized by the State Water Control Law."</i>
70.I.B.3.c		Aggregate registration of	The language restricting the ability of these facilities to generate credits has been stricken to reflect the same provision being

		facilities not subject to waste load allocations included in the Water Quality Management Planning Regulation (9VAC25-720-50.C thru 120.C) are not eligible to generate credits.	stricken from the Code of Virginia. The effect is that smaller, “non-significant” dischargers can generate credits and fully participate in the trading program.
70.I.C.1.a		York River Phosphorus schedule of compliance date of January 1, 2016.	References to the York River Phosphorus schedule of compliance have be deleted as this schedule will have been completed prior to the effective date of the reissued general permit. Effective dates for James River Phase 2 Total Nitrogen (January 1, 2022) and James River Phase 2 Total Phosphorus (January 1, 2017) waste load allocations are established for the new waste load allocations included in 9VAC25-820.80. No schedule of compliance is established for the new Total Phosphorus waste load allocations because the watershed aggregate waste load is currently being met and §62.1-44.19.14.C.2 of the Code of Virginia requires compliance with the new waste load allocations as soon as possible.
70.I.C.2.b		Waiving of compliance schedules	Reference to 9VAC25-820-70 replaced with “ <u>9VAC25-820-80</u> ” and compliance date updated from 2012 to “ <u>2017</u> ” to reflect location of listing of facilities subject to a compliance schedule and the reissued permit term.
70.I.D.		Annual update of compliance plan reference to Water Quality Improvement Fund	“Water Quality Improvement Fund” replaced with “ <u>Nutrient Offset Fund</u> ” to reflect current state code (§10.1-2128.2)
70.I.E.1.		Monitoring Requirements	<p>Sample collection frequencies were modified to require more frequent sampling at certain facilities. A new sampling frequency of “<u>2/Week*</u>” was established for facilities designed to discharge between 5.0 and 19.999 Million Gallons per Day (MGD). A new sampling frequency of “<u>4/Month***</u>” was established for facilities designed to discharge between 0.5 and 0.999 MGD. These increased monitoring frequencies were made to more accurately quantify the annual nutrient loads from these facilities and to reflect the minimum monitoring frequency typically necessary for process control. In order to minimize any increase in laboratory analysis costs, the following footnotes to the new monitoring frequencies have been included:</p> <p><u>“* Two 24-hour flow composited samples taken in the same calendar week which are then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement.</u></p> <p><u>** Two sets of two 8-hour flow composited samples taken at least one day apart but in the same calendar week which are then composited by flow into two weekly composite samples per month for analysis shall be considered to be in compliance with this requirement.”</u></p>

70.I.E.4.		Treatment of total phosphorus data below the quantification level	Treatment of total phosphorus data below the quantification level was modified as follows: <i>"For total phosphorus, all daily concentration data below the quantification level (QL) for the analytical method used should shall be treated as half the QL."</i> This change clarifies intent and makes the provision consistent with the handling of total nitrogen data below the quantification level.										
70.I.E.4.			New maximum quantification levels were added for nitrogen parameters to eliminate the possible gaming of the permit language. Without this change the treatment of total nitrogen data below the quantification level would allow a party to report lower than actual total nitrogen loads by choosing higher quantification levels. The following language was added to the permit which is consistent with similar provisions in individual VPDES permits: <i>"The quantification levels (QL) shall be less than or equal to the following concentrations:</i> <table border="1" data-bbox="727 720 1174 926"> <thead> <tr> <th><i>Parameter</i></th> <th><i>Quantification Level</i></th> </tr> </thead> <tbody> <tr> <td><i>TKN</i></td> <td><i>0.50 mg/l</i></td> </tr> <tr> <td><i>Nitrite</i></td> <td><i>0.10 mg/l</i></td> </tr> <tr> <td><i>Nitrate</i></td> <td><i>0.20 mg/l</i></td> </tr> <tr> <td><i>Nitrite + Nitrate</i></td> <td><i>0.20 mg/l</i></td> </tr> </tbody> </table> <i>Higher QLs may be approved on a case by case basis where a higher QL routinely results in reportable results of the species in question or is otherwise technically appropriate based on standard lab practices."</i>	<i>Parameter</i>	<i>Quantification Level</i>	<i>TKN</i>	<i>0.50 mg/l</i>	<i>Nitrite</i>	<i>0.10 mg/l</i>	<i>Nitrate</i>	<i>0.20 mg/l</i>	<i>Nitrite + Nitrate</i>	<i>0.20 mg/l</i>
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70.I.I		Public notice for registration statements proposing modification or incorporations of new waste load allocations or delivery factors.	Added the following provision to allow for public comment on any proposed nonpoint source-to-point source trading ratio less than 2:1 allowed by new provisions under 9VAC25-820.II.B.1.b.(1): <i>"e. If applicable, any proposed nonpoint source to point source trading ratio less than 2:1 proposed under Part II 1 b (1)."</i>										
70.I.J.1.c.		Compliance with waste load allocations reference to Water Quality Improvement Fund	"Water Quality Improvement Fund" replaced with <i>"Nutrient Offset Fund"</i> to reflect current state code (§10.1-2128.2)										
70.I.J.2.e.		Credit acquisition from owners of permitted facilities reference to Water Quality Improvement Fund	"Water Quality Improvement Fund" replaced with <i>"Nutrient Offset Fund"</i> to reflect current state code (§10.1-2128.2)										
70.I.J.3.		Credit acquisitions references to	"Water Quality Improvement Fund" replaced with <i>"Nutrient Offset Fund"</i> to reflect current state code (§10.1-2128.2)										

		Water Quality Improvement Fund Payments to the Fund for nitrogen credits	Prices for purchases from the Fund are updated as follows: Payments to the Water Quality Improvement Fund shall be in the amount of \$6.04 for each pound of nitrogen and \$15.08 for each pound of phosphorus and shall be subject to the following requirements: Nutrient Offset Fund shall be in the amount of \$4.60 for each pound of nitrogen and \$10.10 for each pound of phosphorus and shall be subject to the following requirements: These prices reflect the average cost of nutrient removal at projects financed by the Water Quality Improvement Fund over the previous 5 years.
70.II.B.1.b.		Acquisition of waste load allocations	<p><i>“1. Such allocations may be acquired from one or a combination of the following:</i></p> <p><i>a. Acquisition of all or a portion of the waste load allocations or point source nitrogen or point source phosphorus credits from the owners of one or more permitted facilities, based on delivered pounds by the respective trading parties as listed by the department;</i></p> <p><i>b. Acquisition of credits certified by the board pursuant to § 62.1-44.19:20 of the Code of Virginia or certified by the Soil and Water Conservation Board pursuant to § 10.1-603.15:2 of the Code of Virginia. Credits used to offset new or increased nutrient loads under this subdivision shall be:</i></p> <p><i>(1) Subject to a trading ratio of two pounds reduced for every pound to be discharged if certified as a nonpoint source credit by the Soil and Water Conservation Board pursuant to § 40.1-603.15:2§62.1-44.19:20 of the Code of Virginia; On a case-by-case basis the board may approve nonpoint source to source trading ratios of less than 2:1 (but not less than 1:1) when the applicant demonstrates factors that ameliorate the presumed 2:1 uncertainty ratio for credits generation by nonpoint sources such as:</i></p> <p><i>(a) When direct and representative monitoring of the pollutant loadings from a nonpoint source is performed in a manner and at a frequency similar to that performed at VPDES point sources and there is consistency in the effectiveness of the operation of the nonpoint source BMP approaching that of a conventional point source.</i></p> <p><i>(b) When nonpoint source credits are generated from land conservation that ensures permanent protection through a conservation easement or other instrument attached to the deed and when load reductions can be reliably determined.</i></p> <p>These changes reflect the transfer of the responsibility to certify nonpoint source credits from the Department of Conservation to the Department of Environmental Quality as well as the allowance of nonpoint source-to-point source trading ratios less than 2:1 under limited circumstances. The application of the provision for nonpoint-to-point source trading ratios less than 2:1 is subject to public comment and is expected to occur very rarely.</p>
70.II.B.1.c.		Acquisition of waste load allocations reference to Water Quality Improvement Fund	“Water Quality Improvement Fund” replaced with <i>“Nutrient Offset Fund”</i> to reflect current state code (§10.1-2128.2)
70.II.B.4.		Provision addressing pricing of	The following modifications were made to replace “Water Quality Improvement Fund” with <i>“Nutrient Offset Fund”</i> to reflect current state code (§10.1-2128.2) and to delete outdated references to

		<p>annual allocation acquisitions from the Fund</p>	<p>the Department of Conservation and Recreation: "4. Annual allocation acquisitions from the Water Quality Improvement Nutrient Offset Fund. The cost for each pound of nitrogen and each pound of phosphorus shall be determined at the time payment is made to the WQI Fund, based on the higher of (i) the estimated cost of achieving a reduction of one pound of nitrogen or phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of allocation acquired; or (ii) the average cost, as determined by the Department of Conservation and Recreation department on an annual basis, of reducing two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for each pound of allocation acquired.</p>
<p>70.III</p>		<p>Conditions Applicable to all VPDES Permits</p>	<p>A wholesale replacement was made to Section 70.III Conditions Applicable to all VPDES Permits to replace outdated language and to ensure consistency with other general VPDES permits as well as 9VAC-31-190 Conditions applicable to all permits. The modifications are as follows:</p> <p style="text-align: center;"><i>"Part III Conditions Applicable To All VPDES Permits</i></p> <p><i>A. Monitoring-</i></p> <ol style="list-style-type: none"> 1. Samples and measurements taken as required by this permit shall be representative of the monitored activity. 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit. 3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements. 4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories). <p><i>B. Records-</i></p> <ol style="list-style-type: none"> 1. Records of monitoring information shall include: <ol style="list-style-type: none"> a. The date, exact place, and time of sampling or measurements; b. The individual(s) who performed the sampling or measurements; c. The date(s) and time(s) analyses were performed; d. The individual(s) who performed the analyses; e. The analytical techniques or methods used; and f. The results of such analyses. 2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during

		<p>the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.</p> <p>C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the board request that the permittee submit monitoring results, the following subsections would apply.</p> <p>1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.</p> <p>2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved or specified by the department.</p> <p>3. If the permittee monitors any pollutant specifically addressed by this permit more frequently than required by this permit using test procedures approved under 40 CFR Part 136 or using other test procedures approved by the U.S. Environmental Protection Agency or using procedures specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted on the DMR or reporting form specified by the department.</p> <p>4. Calculations for all limitations that require averaging of measurements shall utilize an arithmetic mean unless otherwise specified in this permit.</p> <p>D. Duty to provide information. The permittee shall furnish to the department, within a reasonable time, any information that the board may request to determine whether cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or to determine compliance with this permit. The board may require the permittee to furnish, upon request, such plans, specifications, and other pertinent information as may be necessary to determine the effect of the wastes from the discharge on the quality of state waters, or such other information as may be necessary to accomplish the purposes of the State Water Control Law. The permittee shall also furnish to the department, upon request, copies of records required to be kept by this permit.</p> <p>E. Compliance schedule reports. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than 14 days following each schedule date.</p> <p>F. Unauthorized discharges. Except in compliance with this permit, or another permit issued by the board, it shall be unlawful for any person to:</p> <p>1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; or</p> <p>2. Otherwise alter the physical, chemical or biological properties of such state waters and make them detrimental to the public health, to animal or aquatic life, to the use of such waters for domestic or industrial consumption, for recreation, or for other uses.</p> <p>G. Reports of unauthorized discharges. Any permittee who discharges or causes or allows a discharge of sewage, industrial waste, other wastes or any noxious or deleterious substance into or upon state waters in violation of Part III F, or who discharges or</p>
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		<p>causes or allows a discharge that may reasonably be expected to enter state waters in violation of Part III F, shall notify the department of the discharge immediately upon discovery of the discharge, but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted to the department within five days of discovery of the discharge. The written report shall contain:</p> <ol style="list-style-type: none"> 1. A description of the nature and location of the discharge; 2. The cause of the discharge; 3. The date on which the discharge occurred; 4. The length of time that the discharge continued; 5. The volume of the discharge; 6. If the discharge is continuing, how long it is expected to continue; 7. If the discharge is continuing, what the expected total volume of the discharge will be; and 8. Any steps planned or taken to reduce, eliminate and prevent a recurrence of the present discharge or any future discharges not authorized by this permit. <p>Discharges reportable to the department under the immediate reporting requirements of other regulations are exempted from this requirement.</p> <p>H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge including a bypass or upset should occur from a treatment works and the discharge enters or could be expected to enter state waters, the permittee shall promptly notify, in no case later than 24 hours, the department by telephone after the discovery of the discharge. This notification shall provide all available details of the incident, including any adverse effects on aquatic life and the known number of fish killed. The permittee shall reduce the report to writing and shall submit it to the department within five days of discovery of the discharge in accordance with Part III I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge resulting from:</p> <ol style="list-style-type: none"> 1. Unusual spillage of materials resulting directly or indirectly from processing operations; 2. Breakdown of processing or accessory equipment; 3. Failure or taking out of service some or all of the treatment works; and 4. Flooding or other acts of nature. <p>I. Reports of noncompliance. The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.</p> <ol style="list-style-type: none"> 1. An oral report shall be provided within 24 hours from the time the permittee becomes aware of the circumstances. The following shall be included as information that shall be reported within 24 hours under this paragraph: <ol style="list-style-type: none"> a. Any unanticipated bypass; and b. Any upset that causes a discharge to surface waters. 2. A written report shall be submitted within five days and shall contain: <ol style="list-style-type: none"> a. A description of the noncompliance and its cause; b. The period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and c. Steps taken or planned to reduce, eliminate, and
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			<p>prevent reoccurrence of the noncompliance. The board may waive the written report on a case-by-case basis for reports of noncompliance under Part III I if the oral report has been received within 24 hours and no adverse impact on state waters has been reported.</p> <p>3. The permittee shall report all instances of noncompliance not reported under Part III I 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall contain the information listed in Part III I 2.</p> <p>NOTE: The immediate (within 24 hours) reports required in Parts III G, H, and I may be made to the department's regional office. Reports may be made by telephone, FAX, or online at http://www.deq.virginia.gov/Programs/PollutionResponsePreparedness/MakingaReport.aspx. For reports outside normal working hours, a message may be left and this shall fulfill the immediate reporting requirement. For emergencies, the Virginia Department of Emergency Management maintains a 24-hour telephone service at 1-800-468-8892.</p> <p>J. Notice of planned changes.</p> <p>1. The permittee shall give notice to the department as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:</p> <p>a. The permittee plans alteration or addition to any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:</p> <p>(1) After promulgation of standards of performance under Section 306 of the Clean Water Act that are applicable to such source; or</p> <p>(2) After proposal of standards of performance in accordance with Section 306 of the Clean Water Act that are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal;</p> <p>b. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants that are subject neither to effluent limitations nor to notification requirements specified elsewhere in this permit; or</p> <p>c. The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.</p> <p>2. The permittee shall give advance notice to the department of any planned changes in the permitted facility or activity that may result in noncompliance with permit requirements.</p> <p>K. Signatory requirements.</p> <p>1. Registration statement. All registration statements shall be signed as follows:</p> <p>a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (i) a president, secretary,</p>
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			<p>treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or other actions taken to gather complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;</p> <p>b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or</p> <p>c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.</p> <p>2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:</p> <p>a. The authorization is made in writing by a person described in Part III K 1;</p> <p>b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and</p> <p>c. The written authorization is submitted to the department.</p> <p>3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.</p> <p>4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to</p>
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			<p>appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems that are installed by the permittee only when the operation is necessary to achieve compliance with the conditions of this permit.</p> <p>R. Disposal of solids or sludges. Solids, sludges or other pollutants removed in the course of treatment or management of pollutants shall be disposed of in a manner so as to prevent any pollutant from such materials from entering state waters.</p> <p>S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.</p> <p>T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.</p> <p>U. Bypass:</p> <p>1. "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility. The permittee may allow any bypass to occur that does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to ensure efficient operation. These bypasses are not subject to the provisions of Parts III U 2 and 3.</p> <p>2. Notice:</p> <p>a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, prior notice shall be submitted, if possible, at least 10 days before the date of the bypass.</p> <p>b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Part III I.</p> <p>3. Prohibition of bypass:</p> <p>a. Bypass is prohibited, and the board may take enforcement action against a permittee for bypass, unless:</p> <p>(1) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;</p> <p>(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and</p> <p>(3) The permittee submitted notices as required under Part III U 2.</p> <p>b. The board may approve an anticipated bypass after considering its adverse effects if the board determines that it will meet the three conditions listed above in Part III U 3 a.</p> <p>V. Upset:</p> <p>1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of Part III V 2 are met. A determination made during administrative review of</p>
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			<p>claims that noncompliance was caused by upset, and before an action for noncompliance, is not a final administrative action subject to judicial review.</p> <p>2. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:</p> <p style="padding-left: 40px;">a. An upset occurred and that the permittee can identify the cause(s) of the upset;</p> <p style="padding-left: 40px;">b. The permitted facility was at the time being properly operated;</p> <p style="padding-left: 40px;">c. The permittee submitted notice of the upset as required in Part III I; and</p> <p style="padding-left: 40px;">d. The permittee complied with any remedial measures required under Part III S.</p> <p>3. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.</p> <p>W. Inspection and entry. The permittee shall allow the director, or an authorized representative, upon presentation of credentials and other documents as may be required by law, to:</p> <p style="padding-left: 40px;">1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;</p> <p style="padding-left: 40px;">2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;</p> <p style="padding-left: 40px;">3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and</p> <p style="padding-left: 40px;">4. Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act and the State Water Control Law, any substances or parameters at any location.</p> <p>For purposes of this section, the time for inspection shall be deemed reasonable during regular business hours, and whenever the facility is discharging. Nothing contained herein shall make an inspection unreasonable during an emergency.</p> <p>X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, termination, or notification of planned changes or anticipated noncompliance does not stay any permit condition.</p> <p>Y. Transfer of permits.</p> <p>Permits are not transferable to any person except after notice to the department. Coverage under this permit may be automatically transferred to a new permittee if:</p> <p style="padding-left: 40px;">1. The current permittee notifies the department within 30 days of the transfer of the title to the facility or property, unless permission for a later date has been granted by the board;</p> <p style="padding-left: 40px;">2. The notice includes a written agreement between the existing and new permittees containing a specific date for transfer of permit responsibility, coverage, and liability between them; and</p> <p style="padding-left: 40px;">3. The board does not notify the existing permittee and the proposed new permittee of its intent to deny the new permittee coverage under the permit. If this notice is not received, the transfer is effective on the date specified in the</p>
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			<p>agreement mentioned in Part III Y 2.</p> <p>Z. Severability. The provisions of this permit are severable, and if any provision of this permit or the application of any provision of this permit to any circumstance is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.</p> <p><u>A. Monitoring.</u></p> <p><u>1. Samples and measurements taken as required by this permit shall be representative of the monitored activity.</u></p> <p><u>2. Monitoring shall be conducted according to procedures approved under 40 CFR Part 136 or alternative methods approved by the U.S. Environmental Protection Agency, unless other procedures have been specified in this permit.</u></p> <p><u>3. The permittee shall periodically calibrate and perform maintenance procedures on all monitoring and analytical instrumentation at intervals that will ensure accuracy of measurements.</u></p> <p><u>4. Samples taken as required by this permit shall be analyzed in accordance with 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46 (Accreditation for Commercial Environmental Laboratories).</u></p> <p><u>B. Records.</u></p> <p><u>1. Records of monitoring information shall include:</u></p> <p><u>a. The date, exact place, and time of sampling or measurements;</u></p> <p><u>b. The individual(s) who performed the sampling or measurements;</u></p> <p><u>c. The date(s) and time(s) analyses were performed;</u></p> <p><u>d. The individual(s) who performed the analyses;</u></p> <p><u>e. The analytical techniques or methods used; and</u></p> <p><u>f. The results of such analyses.</u></p> <p><u>2. Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years, the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the registration statement for this permit, for a period of at least three years from the date of the sample, measurement, report or request for coverage. This period of retention shall be extended automatically during the course of any unresolved litigation regarding the regulated activity or regarding control standards applicable to the permittee, or as requested by the board.</u></p> <p><u>C. Reporting monitoring results. Monitoring results under this permit are not required to be submitted to the department. However, should the board request that the permittee submit monitoring results, the following subsections would apply.</u></p> <p><u>1. The permittee shall submit the results of the monitoring required by this permit not later than the 10th day of the month after monitoring takes place, unless another reporting schedule is specified elsewhere in this permit. Monitoring results shall be submitted to the department's regional office.</u></p> <p><u>2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on forms provided, approved</u></p>
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			<p><u>complete and accurate information for permit registration requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;</u></p> <p><u>b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or</u></p> <p><u>c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a public agency includes: (i) the chief executive officer of the agency or (ii) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.</u></p> <p><u>2. Reports, etc. All reports required by permits, and other information requested by the board shall be signed by a person described in Part III K 1 or by a duly authorized representative of that person. A person is a duly authorized representative only if:</u></p> <p><u>a. The authorization is made in writing by a person described in Part III K 1;</u></p> <p><u>b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and</u></p> <p><u>c. The written authorization is submitted to the department.</u></p> <p><u>3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part III K 2 shall be submitted to the department prior to or together with any reports, or information to be signed by an authorized representative.</u></p> <p><u>4. Certification. Any person signing a document under Part III K 1 or 2 shall make the following certification:</u></p> <p><u>"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."</u></p> <p><u>L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act, except that noncompliance with certain provisions of this permit may constitute a violation of the State Water Control Law but not</u></p>
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80		This section includes TP waste load allocations for York Basin dischargers as required by the	Eliminate the York River TP waste load allocations as they are now incorporated in 9VAC25-720 (Water Quality Management Planning Regulation) and includes reduced TN and TP waste load allocations for James River Basin dischargers in accordance with the Commonwealth of Virginia Chesapeake Bay TMDL Phase I Watershed Implementation Plan dated November 29, 2010. This includes establishing individual TP waste load allocations for the

		Chesapeake Bay TMDL.	James River dischargers..
10 thru 80			There are numerous minor grammatical and editorial changes throughout the regulation that do not change the intent of the regulatory provision.
70 Part III C		This section includes requirements for all general permits including reporting of monitoring results requirements.	Removed: [Monitoring results under this permit are not required to be submitted to the department. However, should the board request that the permittee submit monitoring results, the following subdivisions apply.] The removed text was an artifact from boilerplate language used during the development of the regulation
80		This section details facilities that are subject to reduced individual WLAs	Added [James River] in response to a comment and to clarify that only James River facilities were subject to the detailed WLA reductions.
70.I.E.1.		Monitoring Requirements	Sample collection frequencies were modified to require more frequent sampling at certain facilities. A new sampling frequency of "2 Days/Week*" was established for facilities designed to discharge between 0.5 and 19.999 Million Gallons per Day (MGD). These revisions were made to satisfy EPA's objection to the proposed general permit.

Regulatory flexibility analysis

Pursuant to § 2.2-4007.1B of the Code of Virginia, please describe the agency's analysis of alternative regulatory methods, consistent with health, safety, environmental, and economic welfare, that will accomplish the objectives of applicable law while minimizing the adverse impact on small business. Alternative regulatory methods include, at a minimum: 1) the establishment of less stringent compliance or reporting requirements; 2) the establishment of less stringent schedules or deadlines for compliance or reporting requirements; 3) the consolidation or simplification of compliance or reporting requirements; 4) the establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and 5) the exemption of small businesses from all or any part of the requirements contained in the proposed regulation.

This general permit complements 9VAC25-40 (the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay Watershed) and 9VAC25-720 (the Water Quality Management Planning Regulation) and is intended to provide compliance flexibility to the affected facilities in order to ensure the most cost-effective nutrient reduction technologies are installed within the respective tributary watersheds. This regulation does not impose any additional compliance costs upon regulated entities above and beyond those already imposed by the aforementioned regulations, and is intended to provide an alternative means of compliance in order to save the regulated entities money.

142 facilities were initially affected by this regulation, most of which are publicly owned treatment works or large industrial facilities. One facility (J.H. Miles) is categorized as a small business. Certain smaller new or expanded dischargers are required to register for general permit coverage in accordance with §62.1-44.19:14C.5 and §62.1-44.19:15 of the Code of Virginia. These facilities would also be subject to 9VAC25-40 (the Regulation for Nutrient Enriched Waters and Dischargers within the Chesapeake Bay

Watershed). This proposed general permit should provide these new or expanding facilities compliance flexibility.