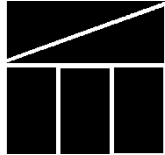


Adverse impact notification sent to Joint Commission on Administrative Rules, House Committee on Appropriations, and Senate Committee on Finance (COV § 2.2-4007.04.C): Yes<sup>1</sup>  Not Needed

If/when this economic impact analysis (EIA) is published in the *Virginia Register of Regulations*, notification will be sent to each member of the General Assembly (COV § 2.2-4007.04.B).



## Virginia Department of Planning and Budget Economic Impact Analysis [Final Stage]

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### **9 VAC 25-260 Water Quality Standards**

**Department of Environmental Quality**

**Town Hall Action/Stage: 5238 / 8559**

April 10, 2019 [Final Stage Update of Proposed Stage Economic Impact Analysis]

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### **Summary of Amendments since Proposed Stage**

An economic impact analysis was published at the proposed stage.<sup>2</sup> Since then, pursuant to Chapters 510 and 511 of the 2018 Acts of Assembly,<sup>3</sup> the State Water Control Board (Board) has proposed to adopt a phased implementation program for the freshwater Ammonia criteria for protection of aquatic life.

### **Result of Analysis**

The benefits likely exceed the costs for all proposed amendments.

### **Estimated Economic Impact**

The compliance costs of the freshwater Ammonia criteria for protection of aquatic life being adopted in this action were previously estimated to be substantial (possibly over one-half billion dollars) in terms of the needed capital and maintenance costs to upgrade affected treatment facilities. However, Chapters 510 and 511 directed the board not to adopt the United States Environmental Protection Agency's Ammonia criteria unless the board included a phased

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<sup>1</sup> Adverse impact is indicated if there is any increase in net cost for any entity, even if the benefits exceed the costs for all entities combined.

<sup>2</sup> [https://townhall.virginia.gov/l/GetFile.cfm?File=103\3171\5343\EIA\\_DEQ\\_5343\\_v1.pdf](https://townhall.virginia.gov/l/GetFile.cfm?File=103\3171\5343\EIA_DEQ_5343_v1.pdf)

<sup>3</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0510> & <http://lis.virginia.gov/cgi-bin/legp604.exe?181+ful+CHAP0511>

implementation program that is consistent with the federal Clean Water Act of 1972 for certain funding and timing considerations. The amendments being adopted in this action establish such a phased implementation program. According to the Department of Environmental Quality (DEQ), the new implementation program would delay compliance costs that would be incurred by affected sources by a minimum of five years, and possibly more beyond the initial estimate of approximately ten years that it would have been without the changes being adopted at this final stage.

In addition to the delayed implementation, a recent statutory change may have an impact on the compliance costs the affected municipal facilities would eventually incur. Chapter 533 of the 2019 Acts of the General Assembly,<sup>4</sup> made certain municipal transfer facilities eligible for funding from the Water Quality Improvement Fund. Under that law, a municipality is now eligible for state funding for building a transfer facility to divert wastewater to another facility that is capable of meeting the new Ammonia criteria. Under the same statute, localities are also eligible for state funding for new facility construction to meet the new Ammonia criteria. The fund may match locality costs between 35% and 75%. As a result, rather than incurring 100% capital costs of a new treatment facility, a locality may now have the option of building a transfer or treatment facility with 35% to 75% of construction costs paid by the fund.

Although, not quantified at this time, DEQ also points out that a longer implementation plan would likely result in economies of scale and further reduce previously estimated compliance costs. With the phased implementation and extended schedules of compliance now available combined with funding eligibility for transfer stations or treatment plants, there may be greater opportunities for consolidation of smaller plants or shunting flows to existing facilities with available treatment capacity. This type of consolidation can take longer to execute than treatment plant upgrades because of the multiple parties involved and the process of securing easements for the transfer. If a facility had only the permit term to comply, this option may not have been available to them. In addition to consolidation providing economies of scale and expected cost savings, the larger plants often provide more consistent and advanced treatment than is achieved at a collection of smaller plants. The phased implementation would likely allow for savings by consolidating capital upgrades. For example, if a permittee planned to expand

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<sup>4</sup> <http://lis.virginia.gov/cgi-bin/legp604.exe?191+ful+CHAP0533>

their facility in eight years, it would save considerable money by consolidating the Ammonia upgrade and the expansion into one project.

### **Businesses and Entities Affected**

The amendments being incorporated apply to 389 publicly owned municipal facilities, 178 privately owned municipal facilities, and 148 industrial facilities.

### **Localities Particularly Affected**

The changes being added apply statewide. Localities with permits that may have to upgrade or install new equipment would be particularly affected. At this point, determining whether a locality (or localities) would be more affected than others would be difficult, if not impossible, until their permits are up for review. However, approximately 220 discharge permits are issued in the Chesapeake Bay watershed and 150 discharge permits are issued outside of the Chesapeake Bay watershed.

### **Projected Impact on Employment**

The implementation program is unlikely to significantly affect total employment upon promulgation as it will extend the compliance time frame for at least five or more years.

### **Effects on the Use and Value of Private Property**

The implementation program is unlikely to significantly affect the use and value of private property. Facilities likely to be affected the most are municipal wastewater treatment facilities. To the extent the proposed less stringent compliance schedule reduces costs on privately owned facilities, their asset values should be positively affected.

### **Real Estate Development Costs**

The phased implementation program does not directly affect real estate development costs.

### **Small Businesses:**

#### **Definition**

Pursuant to § 2.2-4007.04 of the Code of Virginia, small business is defined as “a business entity, including its affiliates, that (i) is independently owned and operated and (ii) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.”

### **Costs and Other Effects**

Some of the 148 affected industrial sources that discharge to surface waters of the Commonwealth may be associated with small businesses. The costs and other effects on them are the same as discussed above.

### **Alternative Method that Minimizes Adverse Impact**

The phased implementation program does not adversely affect small businesses.

#### **Adverse Impacts:**

##### **Businesses:**

The phased implementation program does not adversely affect businesses.

##### **Localities:**

The phased implementation program does not adversely affect localities.

##### **Other Entities:**

The phased implementation program does not adversely affect other entities.

### **Legal Mandates**

**General:** The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

**Adverse impacts:** Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

**Reissued Economic Impact Analysis:** Pursuant to Code § 2.2-4007.04(E): The Department of Planning and Budget shall revise and reissue its economic impact analysis within the time limits set forth for the Department's review of regulations at the final stage pursuant to the Governor's executive order for executive branch review if any

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of the following conditions is present that would materially change the Department's analysis: (1) public comment timely received at the proposed stage indicates significant errors in the economic impact analysis; or (2) there is significant or material difference between the agency's proposed economic impact analysis and the anticipated negative economic impacts to the business community as indicated by public comment. The determination of whether a condition is present under this subsection shall be made by the Department and shall not be subject to judicial review.