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Exempt Action: Final Regulation Agency Background Document

Agency name	State Water Control Board
Virginia Administrative Code (VAC) Chapter citation(s)	Primary action: 9VAC25-720
VAC Chapter title(s)	Water Quality Management Planning Regulation
Action title	Enhanced Nutrient Removal Certainty Program
Final agency action date	June 29, 2021
Date this document prepared	May 14, 2021

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

Brief Summary

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

This amendment to Water Quality Management Planning Regulation (9VAC25-720) is necessary in order to meet a legislative mandate. Nitrogen and phosphorus wasteload allocations for six HRSD facilities in the James River basin are reduced according to effective dates provided in the 9VAC25-720-60 C notes, and the total nitrogen and phosphorous wasteload allocations for the James River basin are adjusted accordingly. The wasteload allocation for one HRSD facility in the James Basin is being transferred to the Nutrient Offset Fund as provided in the 9VAC25-720-60 C notes. The nitrogen and phosphorus wasteload allocations for one former industry are being transferred to HRSD to reflect a previous trade addressed in the legislation. The nitrogen wasteload allocation for one HRSD facility in the York River basin is reduced according to the date provided in the 9VAC25-720-120 C notes, and the total nitrogen wasteload allocation for the York River basin is adjusted accordingly.

Mandate and Impetus

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

The 2021 Acts of Assembly Special Session I, Chapter 363 revised the Code of Virginia § 62.1-44.19:14 to require the State Water Control Board (SWCB) to adopt amendments to the Water Quality Management Planning Regulation and modify Virginia Pollutant Discharge Elimination System permits to implement the Phase III Watershed Implementation Plan Enhanced Nutrient Removal Certainty Program (ENRC Program) as provided in subsection G of that section of the Code of Virginia. As part of that program, subdivisions 2 and 3 of subsection G require that specific nutrient wasteload allocation reductions be made in accordance with the schedule provided.

Acronyms and Definitions

Define all acronyms used in this form, and any technical terms that are not also defined in the "Definitions" section of the regulation.

ENRC Program – Enhanced Nutrient Removal Certainty Program

HRSD – Hampton Roads Sanitation District

TN – Total Nitrogen

TP – Total Phosphorous

STP – Sewage Treatment Plant

SWCB – State Water Control Board

WIP– Watershed Implementation Plan

WWTP – Wastewater Treatment Plant

Statement of Final Agency Action

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

On June 29, 2021, the SWCB took final action to adopt amendments to the Water Quality Management Planning Regulation (9VAC25-720). This regulatory action is to be effective as provided in the Administrative Process Act.

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

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

Legal Basis

Identify (1) the agency or other promulgating entity, and (2) the state and/or federal legal authority for the regulatory change, including the most relevant citations to the Code of Virginia or Acts of Assembly chapter number(s), if applicable. Your citation must include a specific provision, if any, authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency or promulgating entity's overall regulatory authority.

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

Promulgating Entity

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

State Requirements

The scope and purpose of the State Water Control Law is to protect and to restore the quality of state waters, to safeguard the clean waters from pollution, to prevent and to reduce pollution and to promote water conservation. Setting the specific effluent limits needed to meet the water quality goals is within the purview of the Board.

Section 62.1-44.19:14 D of the Code of Virginia requires that the Board review during 2020 and every 10 years thereafter the basis for allocations granted in the Water Quality Management Planning Regulation (9VAC25-720) and as a result of the review propose for inclusion in the regulation either the reallocation of unneeded allocations to other facilities registered under the general permit or the reservation of such allocations for future use. This provision establishes the legal basis for any proposed reallocation of discharger allocations.

Section 62.1-44.19:14 G of the Code of Virginia requires that an Enhanced Nutrient Removal Certainty Program be implemented and consists of priority projects and waste load allocation reductions, and their respective schedules for compliance as specified in this subsection.

The 2021 Acts of Assembly Special Session I, Chapter 363 revised the Code of Virginia § 62.1-44.19:14 to require the State Water Control Board to adopt amendments to the Water Quality Management Planning Regulation and modify Virginia Pollutant Discharge Elimination System permits to implement the Phase III Watershed Implementation Plan Enhanced Nutrient Removal Certainty Program (ENRC Program) as provided in subsection G of that section.

The correlation between the proposed regulatory action and the legal authority identified above is that the amendments are modifications of the current requirements for the treatment of wastewater that will contribute to the protection of Virginia's water quality.

Federal Requirements

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

Purpose

Explain the need for the regulatory change, including a description of: (1) the rationale or justification, (2) the specific reasons the regulatory change is essential to protect the health, safety or welfare of citizens, and (3) the goals of the regulatory change and the problems it's intended to solve.

This amendment is needed to meet specific requirements of the 2021 Acts of Assembly, Special Session I, Chapter 363. The purpose of this amendment is to implement certain nutrient wasteload allocation

reductions on a schedule that will provide some certainty in achieving the goals of the Phase III WIP, which is essential to protecting the health, safety, and welfare of the citizens of Virginia. The goal of this amendment is to protect the water quality of the Chesapeake Bay.

Substance

Briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both. A more detailed discussion is provided in the "Detail of Changes" section below.

This amendment imposes nutrient wasteload allocation reductions on the following facilities by January 1 of the specified year:

HRSD – Boat Harbor STP: one TN reduction (2026) and three phased TP reductions (2026, 2030, 2032).

HRSD – James River STP: one TN reduction (2026) and three phased TP reductions (2026, 2030, 2032).

HRSD – Williamsburg STP: one TN reduction (2026) and three phased TP reductions (2026, 2030, 2032).

HRSD – Nansemond STP: one TN reduction (2026) and three phased TP reductions (2026, 2030, 2032).

HRSD – Army Base STP: one TN reduction (2026) and three phased TP reductions (2026, 2030, 2032).

HRSD – VIP WWTP: one TN reduction (2026) and three phased TP reductions (2026, 2030, 2032).

HRSD – JH Miles: one TP reduction (as already approved in 9VAC25-820-80) and transfer of wasteload allocations from JH Miles to HRSD.

HRSD – Chesapeake/Elizabeth WWTP: one TN reduction (2022) and one TP reduction. TN and TP wasteload allocation reductions previously approved in 9VAC25-820-80. Both wasteload allocations transferred to the Nutrient Offset Fund effective January 1, 2026.

HRSD – York River STP: one TN reduction (2026)

Issues

Identify the issues associated with the regulatory change, including: 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions; 2) the primary advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, include a specific statement to that effect.

The primary advantage to the public of this amendment is protection of the aquatic life in the Chesapeake Bay through attainment of water quality criteria in the Chesapeake Bay and tidal rivers. Reduced annual TP and TN loads are shown to be effective in attaining water quality criteria through water quality modeling. There are no disadvantages to the public.

The primary advantage to the agency and the Commonwealth of this amendment is the increased certainty that the Phase III WIP goals will be achieved. There are no disadvantages to the Commonwealth or the agency.

The primary advantage to the regulated community is increased certainty of achieving the Chesapeake Bay water quality criteria without the imposition of additional nutrient wasteload allocations (although these reductions don't imply that later nutrient allocation reductions can't be required). The primary

disadvantage to the regulated community is the cost of implementing the allocation reductions required by this amendment.

Agencies, Localities, and Other Entities Particularly Affected

Identify any other state agencies, localities, or other entities particularly affected by the regulatory change. "Particularly affected" are those that are likely to bear any identified disproportionate material impact, which would not be experienced by other agencies, localities, or entities. "Locality" can refer to either local governments or the locations in the Commonwealth where the activities relevant to the regulation or regulatory change are most likely to occur. If no agency, locality, or entity is particularly affected, include a specific statement to that effect.

Other State Agencies Particularly Affected

There are no other state agencies particularly affected.

Localities Particularly Affected

This regulation is applicable only within the Chesapeake Bay Watershed, which does not affect all Virginia localities. These amendments are expected to impose a disproportionate material financial impact on any locality served by treatment facilities from which the allocation reductions are required. Whether there is a disproportionate or material water quality impact on those localities that is not experienced by other localities is questionable as all localities within the Chesapeake Bay Watershed share the water quality impacts. Affected localities include all or portions of the Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach and Williamsburg and the Counties of Gloucester, Isle of Wight, James City, King and Queen, King William, Matthews, Surry and York.

Other Entities Particularly Affected

The following wastewater treatment facilities are particularly affected by this amendment: HRSD-Boat Harbor STP, HRSD-James River STP, HRSD-Williamsburg STP, HRSD-Nansemond STP, HRSD-Army Base STP, HRSD-VIP WWTP, HRSD-JH Miles, HRSD-Chesapeake/Elizabeth WWTP, and HRSD-York River STP.

Detail of All Changes Proposed in this Regulatory Action

*List all changes proposed in this exempt action and the rationale for the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. *Please put an asterisk next to any substantive changes.*

Current section number	New section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
Water Quality Management Planning Regulation (9VAC25-720)			
*720-60. James River Basin Subsec. C.	N/A	Nitrogen and phosphorous wasteload allocations to restore the Chesapeake Bay and ...	Subsection title (no changes).

Current section number	New section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
*720-60. James River Basin Subsec. C.	N/A	Virginia Waterbody ID: G15E HRSD – Boat Harbor STP TN 740,000 TP 76,139	Virginia Waterbody ID: G15E HRSD – Boat Harbor STP Revised to read: TN 304,593 ³ TP 38,074 ³ TP 30,459 ⁴ TP 22,844 ⁵ Intent: To reduce TN and TP nutrient wasteload allocations. Rationale: Specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.
*720-60. James River Basin Subsec. C.	N/A	Virginia Waterbody ID: G11E HRSD – James River STP TN 1,250,000 TP 60,911	Virginia Waterbody ID: G11E HRSD – James River STP Revised to read: TN 243,674 ³ TP 30,459 ³ TP 24,367 ⁴ TP 18,276 ⁵ Intent: To reduce TN and TP nutrient wasteload allocations. Rationale: Specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.
*720-60. James River Basin Subsec. C.	N/A	Virginia Waterbody ID: G10E HRSD – Williamsburg STP TN 800,000 TP 68,525	Virginia Waterbody ID: G10E HRSD – Williamsburg STP Revised to read: TN 274,133 ³ TP 34,267 ³ TP 27,413 ⁴ TP 20,560 ⁵ Intent: To reduce TN and TP nutrient wasteload allocations. Rationale: Specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.

Current section number	New section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
*720-60. James River Basin Subsec. C.	N/A	Virginia Waterbody ID: G11E HRSD – Nansemond STP TN 750,000 TP 91,367	Virginia Waterbody ID: G11E HRSD – Nansemond STP Revised to read: TN 365,511 ³ TP 45,689 ³ TP 36,551 ⁴ TP 27,413 ⁵ Intent: To reduce TN and TP nutrient wasteload allocations. Rationale: Specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.
*720-60. James River Basin Subsec. C.	N/A	Virginia Waterbody ID: G15E HRSD – Army Base STP (lbs/yr) TN 610,000 TP 54,820	Virginia Waterbody ID: G15E HRSD – Army Base STP (lbs/yr) Revised to read: TN 219,307 ³ TP 27,413 ³ TP 21,931 ⁴ TP 16,448 ⁵ Intent: To reduce TN and TP nutrient wasteload allocations. Rationale: Specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.
*720-60. James River Basin Subsec. C.	N/A	Virginia Waterbody ID: G15E HRSD – VIP WWTP TN 750,000 TP 121,822	Virginia Waterbody ID: G15E HRSD – VIP WWTP Revised to read: TN 487,348 ³ TP 60,919 ³ TP 48,735 ⁴ TP 36,551 ⁵ Intent: To reduce TN and TP nutrient wasteload allocations. Rationale: Specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.

Current section number	New section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
*720-60. James River Basin Subsec. C.	N/A	Virginia Waterbody ID: G15E JH Miles & Company TN 153,500 TP 21,500	Virginia Waterbody ID: G15E HRSD – JH Miles TN 153,500 (no change) Revised to read: TP 17,437 (reduction previously included in 9VAC25-820-80) Intent: To reduce TN and TP nutrient wasteload allocations. Rationale: Specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.
*720-60. James River Basin Subsec. C.	N/A	Virginia Waterbody ID: C07E HRSD – Ches.-Elizabeth STP TN 1,100,000 TP 108,674	Virginia Waterbody ID: C07E HRSD – Ches.-Elizabeth STP Revised to read: TN 454,596 ^{6,7} TP 41,450 ⁷ (both wasteload allocation reductions previously included in 9VAC25-820-80) Transfer of both wasteload allocations to Nutrient Offset Fund effective 1/1/2026. Intent: To transfer wasteload allocations to Nutrient Offset Fund following facility closure. Rationale: Specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals and providing capacity for future economic development
*720-60. James River Basin Subsec. C.	N/A	TOTALS TN 14,901,739 TP 1,354,375	TOTALS Revised to read: TN 14,256,335 ⁶ TN 11,250,901 ³ TP 1,283,088 TP 1,046,325 ³ TP 998,960 ⁴ TP 951,596 ⁵ Intent: To reduce TN and TP nutrient wasteload allocations. Rationale: Specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.

Current section number	New section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
<p>*720-60. James River Basin Subsec. C.</p>		<p>Notes:</p> <p>¹Wasteload allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 8.0 mg/l and a TP concentration of 1.0 mg/l.</p> <p>²Wasteload allocations are "net" loads, based on the portion of the nutrient discharge introduced by the facility's process waste streams, and not originating in raw water intake.</p>	<p>Notes:</p> <p>¹Wasteload allocations for localities served by combined sewers are based on dry weather design flow capacity. During wet weather flow events the discharge shall achieve a TN concentration of 8.0 mg/l and a TP concentration of 1.0 mg/l. (no change)</p> <p>²Wasteload allocations are "net" loads, based on the portion of the nutrient discharge introduced by the facility's process waste streams, and not originating in raw water intake. (no change)</p> <p>Added:</p> <p>³Effective January 1, 2026.</p> <p>⁴Effective January 1, 2030.</p> <p>⁵Effective January 1, 2032.</p> <p>⁶Effective January 1, 2022.</p> <p>⁷Effective January 1, 2026, the HRSD – Chesapeake-Elizabeth STP wasteload allocations for Total Nitrogen and Total Phosphorus are transferred to the Nutrient Offset Fund.</p> <p>Intent: To provide notes for the effective dates for each of the nutrient allocation changes.</p> <p>Rationale: Effective dates are specified by state law.</p> <p>Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.</p>
<p>*120. York River Basin. Subsec. C.</p>	<p>N/A</p>	<p>Virginia Waterbody ID: F27E HRSD – York River STP</p> <p>TN 275,927</p> <p>TP 18,395</p>	<p>Virginia Waterbody ID: F27E HRSD – York River STP</p> <p>Revised to read: TN 228,444 ¹</p> <p>TP 18,395 (not changed)</p> <p>Intent: To reduce TN and TP nutrient wasteload allocations.</p> <p>Rationale: Specified by state law.</p> <p>Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.</p>

Current section number	New section number	Current requirement	Change, intent, rationale, and likely impact of new requirements
*120. York River Basin. Subsec. C.	N/A	TOTALS TN 1,060,939 TP 123,112	TOTALS Revised to read: TN 1,013,456 ¹ TP 123,112 (not changed) Intent: To reduce TN and TP nutrient wasteload allocations. Rationale: Specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.
*120. York River Basin. Subsec. C.		None.	Added: ¹ Effective January 1, 2026. Intent: To provide an effective date for the TN nutrient allocation change. Rationale: Effective date is specified by state law. Impact: Better certainty in achieving Chesapeake Bay Phase III WIP goals.

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) establishing less stringent compliance or reporting requirements; 2) establishing less stringent schedules or deadlines for compliance or reporting requirements; 3) consolidation or simplification of compliance or reporting requirements; 4) establishing 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 regulatory change.

This regulation meets the requirements of state law. The compliance requirements are the minimum possible consistent with the requirements of the 2021 Acts of Assembly, Special Session I, Chapter 363. Less stringent schedules or deadlines, and exemptions of small businesses would not meet the requirements of subdivisions G 2 and G 3 of that Chapter. Recordkeeping and reporting requirements are not part of the sections amended.

Family Impact

In accordance with § 2.2-606 of the Code of Virginia, please assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one’s spouse, and one’s children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

There are no expected impacts upon the institution of the family or family stability expected resulting from this regulation.