

Office of Regulatory Management
Economic Review Form

Agency name	Department of Environmental Quality
Virginia Administrative Code (VAC) Chapter citation(s)	9VAC-900
VAC Chapter title(s)	Certification of Nonpoint Source Nutrient Credits
Action title	Revisions to CH 900 in response to SB 187 (2022 GA session)
Date this document prepared	09/29/2023- revised 10/2/2023
Regulatory Stage (including Issuance of Guidance Documents)	Final Exempt

Cost Benefit Analysis

Complete Tables 1a and 1b for all regulatory actions. You do not need to complete Table 1c if the regulatory action is required by state statute or federal statute or regulation and leaves no discretion in its implementation.

Table 1a should provide analysis for the regulatory approach you are taking. Table 1b should provide analysis for the approach of leaving the current regulations intact (i.e., no further change is implemented). Table 1c should provide analysis for at least one alternative approach. You should not limit yourself to one alternative, however, and can add additional charts as needed.

Report both direct and indirect costs and benefits that can be monetized in Boxes 1 and 2. Report direct and indirect costs and benefits that cannot be monetized in Box 4. See the ORM Regulatory Economic Analysis Manual for additional guidance.

This regulatory amendment incorporates SB 187 (2022) into the Certification of Nonpoint Source Nutrient Credits regulation. Enactment clause 2 of SB 187 states “the provisions of this act shall become effective 30 days after the Department of Environmental Quality issues guidance regarding the implementation of this act.” The Office of Regulatory Management (ORM) recently approved the guidance document, the guidance document has been published, and became effective September 14, 2023. This means the statutory changes made by SB 187 become effective October 14, 2023. The State Water Control Board adopted these regulations as a final exempt action pursuant to Section 2.2-4006 A 4 a, meaning these regulations must be filed with the Registrar by January 12, 2024 (90 days after the October 14, 2023 effective date of the law).

Because these regulations and the guidance document ORM recently reviewed are integrally related, the content of Tables 1, 2, 3, and 4 on this form are identical to the recently reviewed and approved ORM form for GM 23-2004 Accelerated Release of Nonpoint source Nutrient Credits for Stream Restoration Projects.

As a reminder, in the guidance document criteria were developed to accelerate the release of up to 50 percent of the nutrient credits generated by a stream restoration project based on (i) a determination that the level of risk for restoration failure is low, (ii) the provision of additional financial assurance in an amount adequate to cover the cost of project repair or replacement in the event of failure, and (iii) the experience of the applicant or the applicant's agents who will implement the stream restoration project. To be eligible for an accelerated release, applicants must provide additional documentation to demonstrate that they meet the conditions. Choosing to apply for an accelerated credit release is a voluntary decision made by the applicant and does not change the number of credits released under each project. All determinations will be made by DEQ.

Table 1a: Costs and Benefits of the Proposed Changes (Primary Option)

<p>(1) Direct & Indirect Costs & Benefits (Monetized)</p>	<p>Direct Costs: Bank sponsors may need to fund financial assurance mechanism up front instead of over time, which is typical but not required under the status quo.</p> <p>Indirect Costs: An increase in participation and earlier release of credits, may result in an increase of available credits in the marketplace and a lower the value of nutrient credits in the marketplace, potentially lowering profits made by bank sponsors.</p> <p>Direct Benefits: Bank sponsors will receive credit certification earlier from stream restoration projects and may be able to sell the credits sooner than they can under the status quo.</p> <p>Indirect Benefits: An early release schedule is likely to encourage participation in the nonpoint nutrient trading program by allowing a quicker return on a bank sponsor’s investment. An increase in participation, and earlier release of credits, may result in an increase of</p>
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	available credits in the marketplace and a lower cost for credit purchasers (e.g., developers, homeowners, localities, VDOT, etc.).	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) The timing of the financial assurances due may shift to be funded upfront instead of over time as is typical, but not required, under the status quo.	(b) The total amount of credits generated will remain the same but will be available for sale earlier than under the status quo.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	<p>The actual benefit of being able to sell credits sooner will vary depending on the price of credits at the time they are sold, which is variable and not shared with DEQ.</p> <p>The actual cost of funding the financial assurance mechanism up front instead of over time depends on the amount of interest the money could earn if invested elsewhere, which is variable and not shared with DEQ.</p> <p>Because this regulation only shifts the timing of credit releases and funding of the financial assurances it is expected to be cost-benefit neutral.</p> <p>The introduction of an accelerated release schedule for stream projects may increase program staff time evaluating criteria provided by the bank sponsor to determine whether they are eligible for an accelerated credit release at the time of application. However, an accelerated credit release schedule could result in a reduction of staff time after nutrient bank approval allocated to drafting release letters for subsequent monitoring years since the bulk of credits will be released upfront. Because this regulation only shifts the timing of credit releases and funding of the financial assurances it is expected to be cost-benefit neutral.</p>	
(5) Information Sources		

Table 1b: Costs and Benefits under the Status Quo (No change to the regulation)

(1) Direct & Indirect Costs & Benefits (Monetized)	No quantifiable costs or benefits that can be monetized.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits

	N/A	N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	Staff will continue to evaluate stream releases on an annual basis over at least a 4-year period as outlined in the current release schedule, which may result in more time dedicated to issuing credit release letters for stream projects. No further requirements to evaluate additional criteria of those applying for an accelerated credit release may reduce staff time reviewing applicants' eligibility upfront. Because this regulation only shifts the timing of credit releases and funding of the financial assurances it is expected to be cost-benefit neutral.	
(5) Information Sources		

Table 1c: Costs and Benefits under Alternative Approach(es)- not required to be completed- Regulatory change required by state statute and leaves no discretion in its implementation.

Impact on Local Partners

Use this chart to describe impacts on local partners. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 2: Impact on Local Partners

(1) Direct & Indirect Costs & Benefits (Monetized)	No quantifiable costs or benefits that can be monetized.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	Because this regulation only shifts the timing of credit releases and funding of the financial assurances it is expected to be cost-benefit neutral.	
(4) Assistance	N/A	

(5) Information Sources	
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Impacts on Families

Use this chart to describe impacts on families. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 3: Impact on Families

(1) Direct & Indirect Costs & Benefits (Monetized)	No quantifiable costs or benefits that can be monetized.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	Issuance of this guidance has no anticipated impacts on families.	
(4) Information Sources		

Impacts on Small Businesses

Use this chart to describe impacts on small businesses. See Part 8 of the ORM Cost Impact Analysis Guidance for additional guidance.

Table 4: Impact on Small Businesses

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>Direct Costs: Bank sponsors may need to fund financial assurance mechanism up front instead of over time, which is typical but not required under the status quo.</p> <p>Indirect Costs: An increase in participation and earlier release of credits, may result in an increase of available credits in the marketplace and a lower the value of nutrient credits in the marketplace, potentially lowering profits made by bank sponsors.</p> <p>Direct Benefits: Bank sponsors will receive credit certification earlier from stream restoration projects and may be able to sell the credits sooner than they can under the status quo.</p>
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	<p>Indirect Benefits: An early release schedule is likely to encourage participation in the nonpoint nutrient trading program by allowing a quicker return on a bank sponsor’s investment. An increase in participation, and earlier release of credits, may result in an increase of available credits in the marketplace and a lower cost for credit purchasers (e.g., developers, homeowners, localities, VDOT, etc.).</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	<p>(a) The timing of the financial assurances due may shift to be funded upfront instead of over time as is typical, but not required, under the status quo.</p>	<p>(b) The total amount of credits generated will remain the same but will be available for sale earlier than under the status quo.</p>
(3) Other Costs & Benefits (Non-Monetized)	<p>The actual benefit of being able to sell credits sooner will vary depending on the price of credits at the time they are sold, which is variable and not shared with DEQ.</p> <p>The actual cost of funding the financial assurance mechanism up front instead of over time depends on the amount of interest the money could earn if invested elsewhere, which is variable and not shared with DEQ.</p> <p>Because this regulation only shifts the timing of credit releases and funding of the financial assurances it is expected to be cost-benefit neutral.</p>	
(4) Alternatives	N/A	
(5) Information Sources		

Changes to Number of Regulatory Requirements

Table 5: Regulatory Reduction

For each individual action, please fill out the appropriate chart to reflect any change in regulatory requirements, costs, regulatory stringency, or the overall length of any guidance documents.

Change in Regulatory Requirements

VAC Section(s) Involved	Authority of Change	Initial Count	Additions	Subtractions	Net Change	
9VAC25-900-90	Statutory:	1	0	0	0	
	Discretionary:	20	0	0	0	
					Total Net Change of Statutory Requirements:	0
					Total Net Change of Discretionary Requirements:	0

Cost Reductions or Increases (if applicable)

VAC Section(s) Involved	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases

Other Decreases or Increases in Regulatory Stringency (if applicable)

VAC Section(s) Involved	Description of Regulatory Change	Overview of How It Reduces or Increases Regulatory Burden

Length of Guidance Documents (only applicable if guidance document is being revised)

Title of Guidance Document	Original Length	New Length	Net Change in Length
NA			