

Revised 3/26/2026- to update controversial permit list

TENTATIVE AGENDA  
STATE WATER CONTROL BOARD MEETING

April 7, 2026

IN PERSON ONLY - Bank of America Building 3<sup>rd</sup> floor conference room,  
1111 E. Main Street, Richmond, VA 23219

Convene – 10:00 A.M

<b>Agenda Item</b>	<b>Presenter</b>	<b>Tab</b>
<b>Minutes</b> (November 18, 2025)	Porterfield	A pg 5
<b>Final Exempt Regulations</b> General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820) – 2026 Amendment and reissuance of the existing regulation	Galli	B pg 22
<b>Final Regulations-</b> Virginia Pollution Abatement (VPA) Permit Regulation (9 VAC 25-32)- Implementation of Chapter 209 of the 2024 Acts of Assembly (HB870)	Zahradka	C pg 91
<b>Fast-Track</b> Virginia Water Protection Permit Regulation (9VAC25-210) - Fast-track amendment in response to changes to the Local and Regional Water Supply Planning Regulation (9VAC25-780)	Seavey	D pg 134
Virginia Erosion and Stormwater Management Regulation (9VAC25-875)- Amend the Virginia Erosion and Stormwater Management (VESM) Regulation to improve the efficiency of permit fee collection	Robb	E pg 161
<b>Other Business</b>  Report to the Board Regarding Controversial Permits-	Robb	
<ul style="list-style-type: none"> <li>• Synagro Central LLC – Essex County - VPA00831</li> <li>• Synagro Central LLC – Orange County VPA00075</li> <li>• Arlington County Water Pollution Control Facility - VPDES permit VA0025143</li> <li>• Mountain View Nursing Home - VPDES permit VA0063347</li> <li>• Amazon Data Services Inc. – Lake Anna Tech Campus - VPDES permit VA0093319</li> <li>• Lexington Golf &amp; Country Club- VWP Individual Permit No. 24-2886</li> </ul>		

<b>Agenda Item</b>	<b>Presenter</b>	<b>Tab</b>
Mountain Valley Pipeline - Update Future Meeting date- June 30, 2026 Public Forum ( <i>time not to exceed 45 minutes- no public comment on agenda items or pending regulatory actions during public forum</i> )	Davenport Porterfield	

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## **ADJOURN**

NOTE: The Board reserves the right to revise this agenda without notice unless prohibited by law. Revisions to the agenda include, but are not limited to, scheduling changes, additions or deletions. Questions on the latest status of the agenda should be directed to Melissa Porterfield at (804) 698-4238.

**PUBLIC COMMENTS AT STATE WATER CONTROL BOARD MEETINGS:** The Board encourages public participation in the performance of its duties and responsibilities. To this end, the Board has adopted public participation procedures for regulatory action and for case decisions made by the Department of Environmental Quality (Department). These procedures establish the times for the public to provide appropriate comment to the Board for regulatory action and the Department for case decisions for consideration.

For **REGULATORY ACTIONS** (adoption, amendment or repeal of regulations), public participation is governed by the Administrative Process Act and the Board's Public Participation Guidelines. Public comment is accepted during the Notice of Intended Regulatory Action phase (minimum 30-day comment period) and during the Notice of Public Comment Period on Proposed Regulatory Action (minimum 60-day comment period). Notice of these comment periods is announced in the Virginia Register, by posting to the Department and Virginia Regulatory Town Hall web sites and by mail to those on the Regulatory Development Mailing List. The comments received during the announced public comment periods are summarized for the Board and considered by the Board when making a decision on the regulatory action.

For **CASE DECISIONS** (e.g., issuance and amendment of permits and enforcement orders), the Board adopts public participation procedures in the individual regulations which establish the permit programs. (Note: as of July 1, 2022, the Department takes final action on all case decisions.) As a general rule, public comment is accepted on a draft permit for a period of 30 days. In some cases a public hearing is held at the conclusion of the public comment period on a draft permit. In other cases there may be an additional comment period during which a public hearing is held, usually 45 days.

In light of these established procedures, the Board accepts public comment on regulatory actions as well as general comments, at Board meetings in accordance with the following:

**REGULATORY ACTIONS:** Comments on regulatory actions are allowed only when the staff initially presents a regulatory action to the Board for final adoption. At that time, those persons who commented during the public comment period on the proposal are allowed up to 3 minutes to respond to the summary of the comments presented to the Board. Adoption of an emergency regulation is a final adoption for the purposes of this policy. Also, public comment will be accepted for certain final exempt actions where there has been no public comment period. Persons are allowed up to 3 minutes to address the Board on the emergency regulation and final exempt actions under consideration.

**POOLING MINUTES ON REGULATORY ACTIONS:** Those persons who commented during the public hearing or public comment period and attend the Board meeting may pool their minutes to allow

for a single presentation to the Board that does not exceed the time limitation of 3 minutes times the number of persons pooling minutes, or 15 minutes, whichever is less.

NEW INFORMATION ON A REGULATORY ACTION will not be accepted at the meeting. The Board expects comments and information on a regulatory action to be submitted during the established public comment periods. However, the Board recognizes that in rare instances new information may become available after the close of the public comment period. To provide for consideration of and ensure the appropriate review of this new information, persons who commented during the prior public comment period shall submit the new information to the Department staff contact listed below at least 10 days prior to the Board meeting. The Board's decision will be based on the Department-developed official file and discussions at the Board meeting. Should the Board or Department decide that the new information was not reasonably available during the prior public comment period, is significant to the Board's decision and should be included in the official file, the Department may announce an additional public comment period in order for all interested persons to have an opportunity to participate.

**PUBLIC FORUM:** The Board schedules a public forum at each regular meeting to provide an opportunity for citizens to address the Board on matters other than those on the agenda or pending regulatory actions. Those persons wishing to address the Board during this time should indicate their desire on the sign-in cards/sheet and limit their presentations to 3 minutes or less. Note, there is no pooling of minutes during the public forum.

The Board reserves the right to alter the time limitations set forth in this policy without notice and to ensure comments presented at the meeting conform to this policy.

Department of Environmental Quality Staff Contact: Melissa Porterfield, Policy Analyst, Department of Environmental Quality, 1111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, Virginia 23218, phone (804) 698-4238, e-mail: [Melissa.porterfield@deq.virginia.gov](mailto:Melissa.porterfield@deq.virginia.gov)

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**Additional Meeting Information:**

- No food or beverages allowed in meeting space.
- Attendees may not erect any signage inside or outside the meeting room or building.
- Attendees are not entitled to be disorderly or disrupt the meeting from proceeding in an orderly, efficient, and effective fashion. Disruptive behavior may result in a recess or removal from the meeting.
- Possession or use of any device that may disrupt the conduct of business is prohibited, including but not limited to: voice-amplification equipment; bullhorns; blow horns; sirens, or other noise-producing devices; as well as signs on sticks, poles or stakes; or helium-filled balloons.
- All attendees are asked to be respectful of all speakers.
- Rules will be enforced fairly and impartially not only to ensure the efficient and effective conduct of business, but also to ensure no interference with the business of the complex, its employees and guests.
- Attendees wishing to record the proceedings are welcome to do so; however, you may not interfere with the business of the meeting, nor impede the view or participation of other meeting attendees and staff.
- No smoking is allowed unless in a designated outside space. This includes tobacco & e-cigarettes.
- No alcohol, fireworks, pyrotechnics, weapons, or any substances/items controlled by law are allowed.

- No firearms are allowed in the State's contracted spaces except for firearms carried by law-enforcement officers or authorized security personnel.
- All violators may be subject to removal from the meeting facility.
- Anyone removed from the facility may not reenter.
- Anyone who fails to comply with removal may be charged with trespass.



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Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

**MEMORANDUM**

To: Members of the State Water Control Board

From : Melissa S. Porterfield

Date: February 3, 2026

Subject: Minutes

Attached are the minutes from your meeting on November 18, 2025. Staff will seek your approval of the minutes at your next meeting.

If you have any questions, please contact me at (804) 698-4238 or [melissa.porterfield@deq.virginia.gov](mailto:melissa.porterfield@deq.virginia.gov).



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## **STATE WATER CONTROL BOARD MEETING**

General Assembly Building, Senate Room C, 3rd Floor  
201 North 9th Street, Richmond, VA 23219

**TUESDAY NOVEMBER 18, 2025**

**Board Members Present:**

Lou Ann Jessee-Wallace, Chair  
Scott Cameron, Vice-chair  
Tommy Branin  
Michelle Johnson  
Jerry Kilgore  
Steve Yob

**Board Members Absent:**

Marc Aveni

**Department of Environmental Quality:**

Michael Rolband, Director  
Melissa Porterfield  
Jill Hrynciw

**Office of the Attorney General:**

Emily Little, Assistant Attorney General

1. The attached minutes summarize activities that took place at this Board Meeting.
2. The meeting convened at 10:03 a.m. and adjourned at 11:47 a.m.



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
AT ITS MEETING ON NOVEMBER 18, 2025**

**Minute No. 1- Approval of meeting minutes**

The Board unanimously approved the minutes of the meeting held August 20, 2025.

  
Melissa S. Porterfield



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EXCERPT FROM THE PROCEEDINGS OF THE STATE  
WATER CONTROL BOARD AT ITS MEETING ON NOVEMBER 18, 2025

**Minute No. 2** – Virginia Erosion and Stormwater Management Regulation (9VAC-25-875) - change the statewide permit fee schedule in accordance with Chapter 2 of the 2024 Special Session I Acts of Assembly

Prior to the meeting, the Board was provided with materials including a briefing memo which included a list of the regulatory advisory panel membership, the regulations showing the amendments, and the town hall agency background documents. Jaime Robb, Water Operations Director, presented a summary of the changes to the regulation based on comments the Department received regarding the fee adjustment schedule and to make the Consumer Price Index usage consistent with other Department regulations. No other substantial changes were made to the regulations since the proposed stage in March 2025.

Board member Steven Yob submitted to DEQ staff a signed transactional disclosure statement pursuant to the Virginia State and Local Government Conflict of Interests Act before participating in/voting on this agenda item. He indicated he has a personal interest affected by the transaction being considered because of his employment as Deputy County Manager for Community Operations by Henrico County. Henrico County, like other Virginia localities, is subject to the Virginia Erosion and Stormwater Management Regulation. He indicated he was able to participate in this agenda item fairly, objectively, and in the public interest.

**Board Decision**

Based on the briefing material and the staff presentation, the Board voted unanimously (6-0, Branin, Cameron, Johnson, Kilgore, Wallace, and Yob) to approve the staff recommendations to approve the final amendments to the Virginia Erosion and Stormwater Management Regulation.

A handwritten signature in blue ink that reads "Jaime B. Robb".

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**Jaime B. Robb,**  
**Water Operations Director**



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER  
CONTROL BOARD AT ITS MEETING ON NOVEMBER 18, 2025**

**MINUTE NO. 3 – Water Quality Management Planning Regulation (9VAC25-720)  
Amendments – Adoption of twenty-four new waste load allocations**

Justin Williams, Manager, Office of Watershed and Local Government Assistance Programs, presented an amendment to the Water Quality Management Planning Regulation to adopt twenty-four new waste load allocations for Board approval.

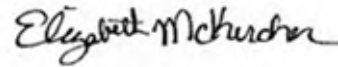
Board member Steven Yob submitted to DEQ staff a signed transactional disclosure statement pursuant to the Virginia State and Local Government Conflict of Interests Act before participating in/voting on this agenda item. He indicated he has a personal interest affected by the transaction being considered because of his employment as Deputy County Manager for Community Operations by Henrico County. Henrico County, like other Virginia localities, is subject to the Water Quality Management Planning Regulation. He indicated he was able to participate in this agenda item fairly, objectively, and in the public interest.

The proposed actions pertain to water bodies in the James River, Potomac-Shenandoah River Basin, and Tennessee-Big Sandy Basins:

1. Three new waste load allocations for sediment in Crooked Run, Stony Creek, and Pugh Runs located in Shenandoah County.
2. Nine new waste load allocations for sediment in Black Creek, Deep Run, Dover Creek, Hat Creek, Jordans Branch, North Run, Stony Run, Stony Run unnamed tributary, and Upham Brook and four new waste load allocations for phosphorus for Black Creek, Dover Creek, Stony Run, and Upham Brook located in Goochland County, Henrico County, Nelson County, and Richmond City.
3. Eight new waste load allocation for sediment in Bryers Creek, Cedar Creek, Greenway Creek, Hall Creek, Lower Middle Fork Holston (upstream of Route 91), Lower Middle Fork Holston (Route 91 to Edmondson Dam), Tattle Branch, and Upper Middle Fork Holston River located in Smyth, Washington, and Wythe Counties.

**Board Decision:**

Based on the Board Book briefing material and the staff presentation, the Board voted unanimously (6-0, Branin, Cameron, Johnson, Kilgore, Wallace and Yob) to adopt the Water Quality Management Planning Regulation amendments and affirm that the Board will receive, consider and respond to petitions by any interested person at any time with respect to reconsideration or revision.



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Elizabeth McKercher, Director  
Water Planning Division



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EXCERPT FROM THE PROCEEDINGS OF THE STATE  
WATER CONTROL BOARD AT ITS MEETING ON NOVEMBER 18, 2025

**Minute No. 4** – Reissuance of Virginia Water Protection General Permit Regulations - Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (9VAC25-660); Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (9VAC25-670); Virginia Water Protection General Permit for Linear Transportation Projects (9VAC25-680); and Virginia Water Protection General Permit for Impacts from Development and Certain Mining Activities (9VAC25-690)

Prior to the meeting, the Board was provided with materials including a briefing memo which included a list of the technical advisory committee membership, the regulations showing the amendments, and the town hall agency background documents. Brenda Winn from the Office of Wetlands and Stream Protection presented a summary of the significant changes to the regulations. No changes were made to the regulations since the proposed stage in June 2025.

Board member Steven Yob submitted to DEQ staff a signed transactional disclosure statement pursuant to the Virginia State and Local Government Conflict of Interests Act before participating in/voting on this agenda item. He indicated he has a personal interest affected by the transactions being considered because of his employment as Deputy County Manager for Community Operations by Henrico County. Henrico County, like other Virginia localities, is subject to the Virginia Water Protection (VWP) General Permit Regulations. He indicated he was able to participate in this agenda item fairly, objectively, and in the public interest.

**Board Decision**

Based on the briefing material and the staff presentation, the Board voted unanimously (6-0, Branin, Cameron, Johnson, Kilgore, Wallace, and Yob) to approve the staff recommendations to approve these general permit regulations as final regulations: Virginia Water Protection General Permit for Impacts Less Than One-Half Acre (9VAC25-660); Virginia Water Protection General Permit for Facilities and Activities of Utility and Public Service Companies Regulated by the Federal Energy Regulatory Commission or the State Corporation Commission and Other Utility Line Activities (9VAC25-670); Virginia Water Protection General Permit for Linear Transportation Projects (9VAC25-680); and Virginia Water Protection General Permit for Impacts

from Development and Certain Mining Activities (9VAC25-690). The Board also affirmed that it would receive, consider and respond to petitions by any person at any time with respect to reconsideration of these regulations, as provided by the Administrative Process Act.



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**Jaime B. Robb,  
Water Operations Director**



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EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT  
ITS MEETING ON NOVEMBER 18, 2025

**MINUTE NO. 5- Proposed Regulation - Water Quality Standards – (9VAC25-260)- 2024  
Triennial Review Rulemaking to adopt new, update, or cancel existing water quality  
standards as required by § 62.1-44.15 of the Code of Virginia and the Federal Clean Water  
Act, 33 U.S.C. §§ 1251**

Dr. Tish Robertson, Water Quality Standards scientist, made a presentation pertaining to the mandatory Triennial Review (TR), with a recommendation to proceed to public comment and hearing on proposed amendments.

Dr. Robertson gave a background on actions to-date under the TR process, including:

- Notice of Intended Regulatory Action (NOIA) publication on April 21, 2025 and close of public comment on May 21, 2025.
- Formation of a 15-member Regulatory Advisory Panel (RAP), which met three times during the summer of 2025.

Dr. Robertson presented the following substantive proposed amendments:

- Expansion of the Deep Water designated use in Virginia's portion of the Chesapeake Bay mainstem.
- Adoption of nationally-recommended freshwater aquatic life criteria for PFOA and PFOS.
- Modification of language pertaining to the copper biotic ligand to enable the implementation of BLM-based criteria for the purposes of permitting evaluations.
- Addition of a significant digit to five Chesapeake Bay dissolved oxygen criteria.
- Modification of implementation language pertaining to Chesapeake Bay dissolved oxygen criteria to allow for DEQ-approved methods in addition to the cumulative frequency distribution method.
- Adoption of a special dissolved oxygen criterion for the tidal Chickahominy River and the tidal Pocomoke River (oligohaline portion only).

Dr. Robertson presented a list of items that were suggested for inclusion during the public comment period and discussed with the RAP. DEQ's responses to these comments were provided in the Board memo and Townhall Background Document.

### **Board Decision**

Based on the briefing material and staff presentation, a vote was taken, and the Board unanimously (6-0, Kilgore, Cameron, Branin, Johnson, Yob, Wallace) approved staff recommendation to proceed to public comment on proposed amendments to 9VAC25-260 and for staff to serve as the hearing officer at public hearings.



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Bryant Thomas, Director  
Water Resources Division



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD  
AT ITS MEETING ON November 18, 2025**

**MINUTE 6 - FY 2026 Virginia Clean Water Revolving Loan Fund Final Authorizations**

Mrs. Meghan Mayfield, Director of the Department's Clean Water Financing and Assistance Program (the Program), gave a presentation to the Board based on a memorandum dated November 11, 2025. The memorandum identified the loan amounts, terms, and interest rates for 22 projects being recommended by staff for FY 2026 Virginia Clean Water Revolving Loan Fund (the Fund) assistance.

Ms. Mayfield began her presentation by summarizing the FY 2026 application process for 22 projects for a total funding amount of \$255,742,977 in assistance from the Fund. She explained that staff had completed its user charge impact analyses for the targeted recipients in order to establish the interest rates in accordance with Board guidelines. She stated that a public meeting on the proposed funding list was not held but the proposed funding list, Intended Use Plan, and proposed Project Priority List were all posted to Town Hall and public comment was accepted September 30, 2025 through October 31, 2025. No public comments were received.

Ms. Mayfield explained that all the interest rate analyses have been finalized in accordance with the Board approved guidelines and the resulting recommendations were included in the memorandum to the Board. As approved by the Board in previous years, staff recommended revisions to the program rates and term options offered to borrowers whose project type and impact on user rates resulted in a program rate based on the Board's Guidelines. Based on consultation with the Virginia Resources Authority (VRA), she stated that the staff was recommending that the program rate calculation vary depending on the term of the loan for wastewater projects.

Staff recommendation: Authorize the execution of loan agreements for the projects, loan amounts, interest rates and terms listed in the below table, and that 20-year term program rates are set at 1.5% (150 basis points) below market, 25-year term program rates are 1.25% (125 basis points) below market, and 30-year term program rates are 1.00% (100 basis points) below market, based on VRA's evaluation of the market conditions that exist about a month prior to each loan closing. The hardship interest rate will be 0.5%, and the minimum interest rate will be 1% for all other loans. Loan closings would be subject to receipt of a favorable financial capability analysis report and supporting recommendation from VRA for each loan recipient.

## FY 2026 Proposed Interest Rates and Loan Term Authorizations

Applicant	Loan Amount	Interest Rates	Max Term
Hampton Roads Sanitation District	\$60,000,000	PR	up to 25 years
City of Norfolk Department of Public Utilities	\$30,000,000	0.5%	up to 25 years
Bristol Virginia Utilities Authority	\$5,554,253	0.5%	up to 30 years
City of Lynchburg	\$18,215,000	PR	up to 30 years
Town of Christiansburg	\$3,786,340	PR	up to 25 years
City of Martinsville	\$16,672,000	0.5%	up to 25 years
Town of Wytheville	\$24,469,000	PR	up to 25 years
Wythe County Board of Supervisors	\$975,000	PR	up to 25 years
City of Richmond	\$51,414,869	0.5%	up to 25 years
Charles City County	\$1,403,125	0.5%	up to 25 years
Town of Front Royal	\$1,800,000	PR	up to 25 years
Town of Bowling Green	\$2,783,800	0.5%	up to 25 years
Town of Pulaski	\$6,600,000	0.5%	up to 30 years
Charles City County	\$1,826,000	0.5%	up to 25 years
Prince William County Service Authority	\$10,000,000	PR	up to 25 years
Town of Pamplin City	\$2,129,300	0.5%	up to 30 years
Town of Blackstone	\$611,632	PR	up to 30 years
Town of Blackstone	\$4,168,446	PR	up to 30 years
City of Hopewell	\$1,029,022	PR	up to 25 years
Town of Front Royal	\$7,960,000	PR	up to 25 years
Upper Occoquan Service Authority	\$1,300,000	0%	up to 25 years
Washington County Service Authority	\$3,045,190	0.5%	up to 30 years
<b>TOTAL</b>	<b>\$255,742,977</b>		
PR = Program Rate *minimum 1%			

**Board Decision: The Board voted unanimously (6-0) to adopt the staff's recommendation.**



Meghan M. Mayfield,  
**Director Clean Water Finance & Training  
 Services**



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT  
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**Minute No. 7 - Report to the Board Regarding Controversial Permits:**

- Synagro Central LLC – Essex County - VPA00831
- Synagro Central LLC – Orange County VPA00075
- Surface Water Withdrawal Permit issuance, Caroline County VWP No. 20-0514
- Waterford Sewage Treatment Plant, Loudoun County Sanitation Authority – VPDES permit VA0060500
- Arlington County Water Pollution Control Facility - VPDES permit VA0025143
- Transcontinental Gas Pipe Line Company (Transco) Southeast Supply Enhancement Project (SSEP) -Upland 401 Water Quality Certification
- Transcontinental Gas Pipe Line Company (Transco) Southeast Supply Enhancement Project (SSEP) - Individual Virginia Water Protection Permit - Number 25-1277
- Mountain Valley Pipeline, LLC Southgate Amendment Project - Individual Virginia Water Protection Permit - Number 25-0752

In accordance with § 10.1-1184.1 B of the Code of Virginia, Bryant Thomas and Melanie Davenport provided the Controversial Permit Report to the Board. The report included each permit number, location of the activities, a summary of events prior to the Board meeting and the schedule for the remaining actions to be taken by the Department. The Board was provided the opportunity to respond to the Department's presentation and provide commentary regarding the permits.

A handwritten signature in blue ink, appearing to read "Bryant Thomas", written over a horizontal line.

**Bryant Thomas**  
**Water Resources Division Director**



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT  
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**Minute No. 8: Mountain Valley Pipeline – Update**

Ms. Davenport presented an update on the status of the project. She reported that the project continues in the post-restoration phase and the ongoing activity for this quarter involves achieving permanent vegetation and maintaining erosion and sediment controls until ground cover is uniform and mature enough to survive. Controls are also being removed where they are no longer needed. She provided an overview of compliance activities from June 11, 2025, to September 10, 2025 and noted that for the period June 11, 2025 to September 10, 2025 DEQ assessed \$11,500 in stipulated penalties.

  
Melanie D. Davenport



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER  
CONTROL BOARD AT ITS MEETING ON NOVEMBER 18, 2025**

**MINUTE 9 – Report on Groundwater supply in the Commonwealth east of Interstate 95**

Mr. Brian Campbell, Groundwater Characterization and Monitoring Manager, provided the Board with an informational report on DEQ's study of groundwater supply in the Commonwealth east of I-95, as requested by Senate Joint Resolution No. 25 (2024 Session). Mr. Campbell noted that a full report was under review and that the final report would be submitted to the General Assembly for publication in the 2026 Regular Session. The informational report to the Board included a brief overview of groundwater supply in the Virginia Coastal Plain aquifer system, including the source aquifers and major uses of groundwater in the Eastern Virginia Groundwater Management Area and the Eastern Shore Groundwater Management Area. Mr. Campbell reviewed historical data and trends in groundwater levels and groundwater quality. The presentation included DEQ's analysis of the aquifer system's capacity for new withdrawals, as well as the study's implications for aquifer replenishment. Finally, Mr. Campbell summarized DEQ's assessment of the Groundwater Management Act of 1992 and noted that DEQ's report would offer recommendations on how to make the Act more effective.

A handwritten signature in blue ink, appearing to read "Bryant Thomas".

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Bryant Thomas, Water Resources Division Director



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT  
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**Minute No. 10- Future Meeting Date**

No future meeting dates for the Board were confirmed at this meeting.

  
Melissa S. Porterfield



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**EXCERPT FROM THE PROCEEDINGS OF THE STATE WATER CONTROL BOARD AT  
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**Minute No. 11- Public Forum**

No members of the public addressed the Board during the public forum.

  
Melissa S. Porterfield

**TAB B**



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

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David L. Bulova  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

March 16, 2026

**MEMORANDUM**

TO: State Water Control Board Members

FROM: Jaime Robb, Director, Division of Water Operations *Jaime B. Robb*

SUBJECT: Reissuance of the Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nutrient Discharges and Trading in the Chesapeake Bay Watershed (9VAC25-820)

**Background**

The current General VPDES Watershed Permit Regulation for Total Nitrogen and Total Phosphorous Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia (9VAC25-820), which is being retitled as the “Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nutrient Discharges and Trading in the Chesapeake Bay Watershed,” will expire on December 31, 2026. The regulation establishing this general permit is being amended to reissue it for another five-year term. The Virginia Department of Environmental Quality (DEQ) staff is bringing this final regulation before the State Water Control Board (Board) to request the adoption of the amendments. The staff will also recommend that the Board affirm that it will receive, consider, and respond to petitions by any person at any time with respect to reconsideration or revision of this regulation, as provided by the Administrative Process Act.

A Notice of Intended Regulatory Action (NOIRA) for the amendment was published August 12, 2024. Following the conclusion of the 30-day public comment period, DEQ formed a technical advisory committee (TAC) to assist in the development of the proposed amendments. The final regulation takes into consideration the recommendations of the TAC formed for this regulatory action.

A list of the TAC membership is attached.

The proposed regulation was approved by the Board on August 20, 2025, and a public comment period was held October 6, 2025, through December 5, 2025, with a public hearing held on November 10, 2025. Seven members of the public attended the hearing and three comments were received during the hearing. Additional public comments were received in writing during the comment period. U.S. EPA Region 3 also provided comments prior to the beginning of the public comment period. The comments and responses are summarized in the attached Town Hall Agency Background Document.

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### Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nutrient Discharges and Trading in the Chesapeake Bay Watershed - 9VAC25-820

The final regulation, TAC membership, Agency Background Document (TH-09), and Fact Sheet are attached.

#### **Amendments made during the Proposed Stage**

The Board adopted final amendments to the current regulation during the August 25, 2022, meeting to conform to changes in Virginia statutory law (Chapter 365 of the 2022 Acts of Assembly) regarding Board authority. In the proposed regulatory action, sections of the general permit/regulation that were not amended in 2022 changed the term “board” to “department” where the context relates to any action except the adoption of regulations.

Substantive changes to the existing general permit regulation (9VAC25-820) in the proposed stage included:

#### Revised Regulation name

- Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nutrient Discharges and Trading in the Chesapeake Bay Watershed.

#### 9VAC25-820-10 Definitions

- Deleted definition for “Board”.
- Added definition for “Nutrient Offset Fund”.

#### 9VAC25-820-15 Applicability of incorporated references based on the dates that they became effective

- Updated Title 40 of the Code of Federal regulations (CFR) reference date to July 1, 2025.

#### 9VAC25-820-20 Purpose, applicability

- Revised regulation name

#### 9VAC25-820-40 Compliance Plans

- Removed compliance plan language for completed Enhanced Nutrient Removal Certainty Program (ENRC) and chlorophyll-a nutrient reductions because these timelines will have passed before January 1, 2027, the effective date of the reissued general permit.

#### 9VAC25-820-70 General Permit

- Changed effective date to January 1, 2027, and expiration date to December 31, 2031.
- Revised Part I A – Special conditions applicable to all facilities – continuation of permit coverage date for submitting a complete registration statement to November 1, 2026.
- Revised Part I B 3 - Wasteload allocations – to change “aggregate” mass load to “consolidated” mass load to distinguish between the two ways facilities under common ownership may combine discharges. Under Part I B 2, facilities may aggregate mass loads. Under revised Part I B 3, facilities may consolidate mass loads in the same tributary.
- Added Part I B 4 to address facilities in different tributaries that apply for a consolidated mass load limit. (This section has been removed from the final amendments as discussed below.)

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### Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nutrient Discharges and Trading in the Chesapeake Bay Watershed - 9VAC25-820

- Added Part I B 5 - Termination of a wasteload allocation – to explain what happens when a facility’s permit is terminated with no flow diversion.
- Revised Part I C 3 to remove 9VAC25-820-80 B (ENRC) schedule of compliance references.
- Reduced monitoring frequencies and design flow ranges in Part I E 1 – Monitoring Requirements – for design flows between 0.5 and 0.999 million gallons per day (MGD) and 1.0 and 4.99 MGD in response to a TAC member’s recommendation and evidence from a statistical analysis that demonstrates that a reduced monitoring frequency is sufficient to capture loading variability for accurate accounting of annual loads.
- Revised Part I E – Monitoring Requirements – to add rounding and monthly average TP and TN calculations language.
- Revised Part I J – Compliance with wasteload allocations – Credit acquisitions from the Nutrient Offset Fund – Payments to the Nutrient Offset Fund – to reflect current costs for nutrient reduction.
- Revised Part II B – Acquisition of wasteload allocations – to include new option to receive point source credits from the Virginia Nutrient Credit Exchange Association.
- Revised Part III I 3 – Reports of noncompliance- updated language for reporting outside of normal working hours.
- Revised Section 80 A and 80 B to remove those facilities that have met or will achieve compliance by the expiration date of the current permit, with the ENRC and chlorophyll-a reduced wasteload allocations.

### Changes Since the Proposed Stage

- 9VAC25- 820-70 Part I B 4
  - This proposed amendment to this section has been removed in response to public comments. While state law does not currently address nor prohibit the transfer of wasteload allocation across tributaries, it does authorize the transfer of nutrient credits between certain tributaries (§ 62.1-44.19:18 A 1 ii). Because there may be additional regulatory barriers to implementing the amendments as proposed, they are not included in the final amendments. By removing the proposed amendment from the final regulation, there will be no change in the existing requirements or alternatives for members of the regulated community.
- 9VAC25-820-70 Part I E 1 (Table)
  - The acronym “HC” is used in the table, but is not defined. A definition for “HC,” means “hour composite,” has been added to the table to provide clarity and improve understanding.
- 9VAC25-820-70 Part I G 1 a
  - The date for the submittal of the Registration Statement has been changed to November 1, 2031 to reflect the correct due date for the new reissuance cycle.
- 9VAC25-820-70 Part II B 1 Acquisition of Wasteload Allocations
  - The final regulation has been amended as follows to improve clarity:
    - B. Acquisition of wasteload allocations [ or annual point source credits ]. Wasteload allocations [ or annual point source credits ] required by this section to offset new or

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increased delivered total nitrogen and delivered total phosphorus loads, shall be acquired in accordance with this section.

1. Such allocations [ or annual point source credits ] may be acquired from one or a combination of the following...

**Attorney General Certification**

The Office of the Attorney General reviewed the proposed regulation and provided certification of statutory authority in a memo dated August 21, 2025. The Office of the Attorney General has been provided with a copy of the final regulation and a certification of the final regulation has been requested.

**Attachments:**

- TAC Membership
- Agency Background Document (Town Hall)
- Final General Permit Regulation
- Fact Sheet
- Office of Regulatory Management Economic Review Form

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Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nutrient Discharges and Trading in the Chesapeake Bay Watershed - 9VAC25-820

**Technical Advisory Committee Membership**

- **Representatives of the Regulated Community**
  - Jamie Heisig-Mitchell - HRSD
  - Chris Pomeroy – Aqua Law
  - Brian Steglitz – Upper Occoquan Service Authority
  - James Grandstaff – Henrico Water Reclamation Facility/Virginia Nutrient Credit Exchange Association
  - Kendra Sveum – Loudoun Water
  - Andrew Parker – Virginia Manufacturers Association
  
- **Representatives of Environmental Groups**
  - Nathan Thompson – James River Association
  - Patrick Fanning – Chesapeake Bay Foundation
  
- **DEQ Central Office (CO) Staff:**
  - Joseph Bryan, CO VPDES Permits Supervisor
  - Laura Galli, CO Guidance and Regulation Coordinator, served as the Group Facilitator.
  - Additional DEQ technical support staff attended the meetings.



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## Exempt Action: Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-820
<b>VAC Chapter title(s)</b>	General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorous Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
<b>Action title</b>	<b>CH 820-2026 Amendment and Reissuance of the Existing Regulation</b>
<b>Final agency action date</b>	April 7, 2026
<b>Date this document prepared</b>	February 23, 2026

This information is required for executive branch review pursuant to Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19. In addition, this information is required by the Virginia Registrar of Regulations pursuant to the Virginia Register Act (§ 2.2-4100 et seq. of the Code of Virginia). Regulations must conform to the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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 general permit regulation governs facilities holding a VPDES individual permit, or owners of facilities that otherwise meet the definition of an existing facility, that discharge or propose to discharge total nitrogen or total phosphorous, or both to the Chesapeake Bay or its tributaries. Facilities covered by the general permit regulation are authorized to discharge to surface waters and trade credits for total nitrogen and total phosphorus to offset discharges that exceed their wasteload allocations. Nitrogen and phosphorous are both nutrients and contribute to pollution in the Chesapeake Bay.

This regulatory action will amend and reissue the existing general permit which expires on December 31, 2026. Additionally, the nutrient load limits, monitoring requirements, and special conditions of the general permit were reviewed and updated to ensure that the permit is still protective of water quality.

**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). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”*

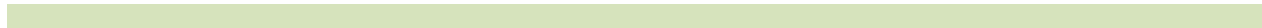
Section 62.1-44.19:14 of the Code of Virginia requires that the State Water Control Board (Board) issue this general permit regulation and specifies requirements for the general permit.

The impetus of the regulatory change is § 62.1-44-15 (5a) of the Code of Virginia which states, “All certificates issued by the Board under this chapter shall have fixed terms. The term of a Virginia Pollution Discharge Elimination System permit shall not exceed five years.” This general permit expires on December 31, 2026, and must be reissued in order to make coverage available for facilities that hold individual VPDES permits and discharge or propose to discharge total nitrogen and total phosphorous to the Chesapeake Bay or its tributaries.

**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.*

- 8 HC / 24 HC: 8-Hour / 24-Hour composite sample: The sampling process design for NPDES compliance monitoring
- Board: State Water Control Board
- CBF: Chesapeake Bay Foundation
- CFR: Code of Federal Regulations
- DEQ or department: Department of Environmental Quality
- MGD: Million gallons per day
- NOIRA: Notice of Intended Regulatory Action
- NPDES: National Pollutant Discharge Elimination System
- ORM: Office of Regulatory Management
- POTW: Publicly owned treatment works - sewage treatment facilities owned and operated by a government agency, typically a municipality
- TAC: Technical Advisory Committee
- TKN: Total Kjeldahl Nitrogen
- TMDL: Total Maximum Daily Load
- TN: Total Nitrogen
- TP: Total Phosphorus
- U.S. EPA: United States Environmental Protection Agency
- USC: United States Code
- VAC: Virginia Administrative Code
- VAMWA: Virginia Association of Municipal Wastewater Agencies
- VPDES: Virginia Pollutant Discharge Elimination System
- WIP: Watershed Implementation Plan



**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) that the agency has “adopted final amendments” to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, “On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)].”*

The State Water Control Board adopted these amendments to 9VAC25-820, retitled as the “Virginia Pollutant Discharge Elimination System (VPDES) General Permit Regulation for Nutrient Discharges and Trading in the Chesapeake Bay Watershed,” on April 7, 2026 as a final regulation and affirmed that the Board will receive, consider, and respond to petitions by any interested person at any time with respect to reconsideration or revision.

**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 basis for this regulation is the State Water Control Law, § 62.1-44.2 et seq. of the Code of Virginia. Specifically, § 62.1-44.19:14 of the Code of Virginia directs the Board to issue a Watershed General VPDES Permit authorizing point source discharges of total nitrogen and total phosphorous to the waters of the Chesapeake Bay and its tributaries, § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations, and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from discharge on the quality of state waters.

Section 402 of the Clean Water Act (33 USC § 1342) authorizes states to administer the NPDES permit program under state law. The Commonwealth of Virginia received such authorization in 1975 under the terms of a Memorandum of Understanding with the U.S. EPA. This Memorandum of Understanding was modified on May 20, 1991, to authorize the Commonwealth to administer a General VPDES Permit Program.

40 CFR Parts 122, 123, and 124 implement the NPDES permit program under § 402 of the Clean Water Act. These provisions cover basic U.S. EPA permitting requirements, what a state must do to obtain approval to operate its program in lieu of a federal program and minimum requirements for administering the approved state program, and procedures for U.S. EPA processing of permit applications and appeals. Sections 122.1 (40 CFR § 122.1) requires permits for the discharge of “pollutants” from any “point source” into “waters of the United States.”

Changes to this chapter of the Virginia Administrative Code are exempt from Article 2 of the Administrative Process Act (§ 2.2-4006 A 8 of the Code of Virginia).

**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 final regulatory action protects the health, safety, and welfare of citizens by establishing permitting requirements for discharges of total nitrogen and total phosphorous to the Chesapeake Bay and its tributaries from sewage treatment facilities and industrial facilities that are already authorized to make

such discharges by an individual VPDES permit. The existing general permit expires on December 31, 2026, and must be reissued to cover new and existing nitrogen and phosphorous discharges. The general permit establishes annual effluent loading limits for total nitrogen and total phosphorous and establishes the conditions by which credits (the difference in pounds between a facility’s limit and the mass actually discharged) may be traded. The general permit also establishes how any increase in nitrogen and phosphorous loading from a new or expanding discharger must be offset by other nutrient reductions elsewhere in the basin.

**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.*

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The general permit establishes nutrient load limits and monitoring requirements for discharges to the waters of the Chesapeake Bay and its tributaries. The nutrient load limits, monitoring requirements, and special conditions of the general permit were reviewed and updated to ensure that the permit is still protective of water quality.

The primary issue being addressed is that the existing general permit expires on December 31, 2026, and must be reissued to continue making it available after that date. Additional updates include clarifying consolidation versus aggregation of facilities, clarifying when and how wasteload allocations are terminated without transfer, removing language for completed compliance schedules, updating monitoring requirements, adding language to clarify monthly average reporting procedures, and adding language regarding a new option to obtain point source credits through the Virginia Nutrient Credit Exchange Association.

**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.*

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The advantages to the public, permittees, and the Agency of reissuing this general permit are that a Virginia Pollutant Discharge Elimination System (VPDES) General Permit will continue to be available to facilities with eligible discharges enabling them to discharge to surface waters in manner that is protective of those waters. There are no known disadvantages to the public, Agency, Commonwealth or regulated community.

**Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

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There have been no changes made to this analysis since the previous stage of this action. There are no requirements in the final regulation that are more restrictive than applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

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There have been no changes made to this analysis since the previous stage of this action.

**Other State Agencies Particularly Affected:**

State agencies with current or pending general permit coverage would be particularly affected.

**Localities Particularly Affected:**

This regulation is applicable throughout the Chesapeake Bay Watershed, which does not affect all Virginia localities. The final amendments are not expected to impose a disproportionate material water quality impact on any locality that would not be experienced by the other localities within the watershed. Whether there is a disproportionate or material water quality impact on localities that is not experienced by other localities is questionable as all localities within the Chesapeake Bay Watershed share the water quality impacts. Any locality in the watershed operating a publicly owned treatment works (POTW) would be subject to this general permit regulation.

**Other Entities Particularly Affected:**

Facilities that discharge or propose to discharge total nitrogen or total phosphorous, or both to the Chesapeake Bay or its tributaries, must do so in a manner consistent with this general permit. No other entities are particularly affected by the final regulation.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. Ensure to include all comments submitted: including any received on Town Hall, in a public hearing, or submitted directly to the agency or board. If no comment was received, enter a specific statement to that effect.*

A public comment period was held from October 6, 2025, through December 5, 2025. A total of seven comments were received. Three comments were received during a public hearing held on November 10, 2025. Three comments were submitted during the public comment period through email. Finally, one comment was received from U.S. EPA Region 3 via email as part of the VPDES review process.

Commenter	Comment	Agency response
Mr. Patrick Fanning, Chesapeake Bay Foundation (CBF)	<p><b>9VAC25- 820-70 Part I B 4</b></p> <p>Our primary concern with the proposed changes to the Watershed General Permit is in this section, which seeks to incorporate into regulations a concept and process that does not currently exist under state law and, even if it could be achieved, would require additional regulatory changes outside of the Watershed General Permit. As such, we believe this language should be removed from any final version of the Watershed General Permit.</p> <p>As DEQ is well aware, nutrient discharges under the Bay TMDL are managed on a watershed basis and specific wasteload allocations are assigned to significant dischargers for each watershed basin. Likewise, Virginia’s Phase III Watershed Implementation Plan (WIP) to achieve the Bay TMDL goals sets target loads by basin, further broken out by sector. Transferring a wasteload allocation between basins is not contemplated.</p>	DEQ acknowledges that state law does not currently address nor prohibit the transfer of wasteload allocation across tributaries; however, it does authorize the transfer of nutrient credits between certain tributaries (§ 62.1-44.19:18 A.1.ii). DEQ concurs that there may be additional regulatory barriers to implementing the regulatory language in 9VAC25-820-70 Part I B 4 during the proposed stage. As such, the proposed language has been removed from the final amendments to the regulation.

	<p>While CBF supports consolidation of wastewater treatment plants where it makes financial sense and where it will improve the level of wastewater treatment, thereby reducing nutrient discharges, we have concerns, which we raised throughout the TAC process and most recently at the public hearing on this permit, that the proposed regulatory language is insufficient to capture what would be a significant departure from the Bay TMDL's and Virginia's watershed-based approaches to regulating point source nutrient discharges. The proposed language is overly simplistic and fails to lay out how DEQ will actually evaluate, consider, and implement a consolidation of facilities currently discharging to different tributaries. Simply allowing for "case-by-case" evaluation of applications for consolidations of facilities discharging to different tributaries without prescribing how the process will work is insufficient. Likewise, throughout the TAC process, no explanation was provided to TAC members as to how the wasteload allocations associated with a consolidation of facilities discharging to different tributaries could be transferred between tributaries. If DEQ has established such a process it should be shared with TAC members, the State Water Control Board, and the public. Finally, allowing for the transfer of allocations across major basins has the potential to result in negative impacts to local water quality within each basin. While Chesapeake Bay TMDL accounting is largely focused upon deep water goals, several tidal segments of Virginia rivers remain impaired as a result of nutrient loading and trading across basins would leave these segments vulnerable to further degradation without mitigation.</p> <p>Given the departure from the watershed-based approach that is the foundation of the Commonwealth's regulation of point source nutrient discharges and the many uncertainties about how consolidation of wasteload allocations for facilities discharging to different tributaries could actually be achieved while maintaining the annual limits for nutrient loading of each tributary under the Bay TMDL and Virginia</p>	
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	<p>WIP, we find the addition of this language to be inappropriate and ask that DEQ remove it from the final permit.</p>	
<p>Mr. Patrick Fanning, CBF</p>	<p><b>9VAC-820-70 Part I B 3</b>                  CBF supports the proposed clarifications in this section regarding consolidation. The language change from “aggregate” to “consolidated” mass load limit appropriately clarifies the text is inclusive of the consolidation of flows from two or more facilities to a single facility in the same tributary.</p>	<p>Thank you for your comment.                   No changes are being made to the regulation in response to this comment.</p>
<p>Mr. Patrick Fanning, CBF</p>	<p><b>9VAC25-820-70 Part I B 5</b>                  We support the proposed clarifying language changes to address termination of wasteload allocations when a facility’s permit is terminated or allowed to expire without flow diversion to another facility.</p>	<p>Thank you for your comment.                   No changes are being made to the regulation in response to this comment.</p>
<p>Mr. Patrick Fanning, CBF</p>	<p><b>9VAC25-820-70 Part II B 1</b>                  CBF suggests that additional minor changes are needed here to improve clarity. The headings and format of this section should be further amended to add needed clarity on the differences between the annual acquisition of point source credits versus the acquisition of wasteload allocations, and to spell out that a discharger cannot acquire wasteload allocations through the Virginia Nutrient Credit Exchange.</p> <p>We suggest the language of Section B be modified from “Acquisition of wasteload allocations. Wasteload allocations required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this section,” to “Acquisition of wasteload allocations <i>or annual point source credits</i>. Wasteload allocations <i>or the acquisition of annual point source credits</i> required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this section.”</p> <p>Further, we suggest the language of Section B(1) be modified from, “Such allocations may be acquired from one or a combination of the following:” to, “Such allocations <i>or point source credits</i> may be acquired from one or a combination of the following:”</p>	<p>9VAC25-820-70 Part II B has been amended as follows to improve clarity:</p> <p style="padding-left: 40px;">B. Acquisition of wasteload allocations <u>or annual point source credits</u>. Wasteload allocations <u>or annual point source credits</u> required by this section to offset new or increased delivered total nitrogen and delivered total phosphorus loads, shall be acquired in accordance with this section.</p> <p style="padding-left: 80px;">1. Such allocations <u>or annual point source credits</u> may be acquired from one or a combination of the following...</p>

<p>Ms. Jennifer Fulton Chief, Clean Water Branch U.S. EPA Mid-Atlantic Region</p>	<p>U.S. EPA has reviewed the draft permit and fact sheet submitted on June 16, 2025. The revisions to the General Permit (GP) Regulation for Nutrient Discharges and Trading in the Chesapeake Bay Watershed (VAN00000) draft reissuance incorporate several significant updates including reducing the monitoring frequency for total nitrogen (TN) and total phosphorus (TP) from twice per week to once per week for the 1.0-4.99 MGD and 0.5-0.999 MGD facilities. Based on our review of this draft permit and fact sheet, U.S. EPA offers the following comments:</p> <ul style="list-style-type: none"> <li>• Please clarify how the monitoring frequency proposed in the draft is consistent with 40 CFR §122.48(b).</li> </ul>	<p>40 CFR §122.48(b) states that all permits shall specify: “b) required monitoring including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including, when appropriate, continuous monitoring.”</p> <p>The basis for the 2027 monitoring frequencies in the proposed amendments, including statistical evaluations of data obtained at the original monitoring frequencies (from 2007 and 2012 terms), were discussed at length in the Fact Sheet. Additionally, as noted in the Fact Sheet, the monitoring frequencies for 2027 are more frequent than those originally established for this general permit in 2007 and carried forward in 2012. The frequencies were increased significantly for the 2017 reissuance and were not re-evaluated for 2022. Members of the regulated community requested that DEQ update the monitoring frequencies for 2027. DEQ evaluated data reported under the 2022 and earlier general permits and compared it to monitoring frequencies of other Nutrient GPs (e.g. U.S.EPA’s Great Bay Total Nitrogen General Permit; Connecticut’s General Permit for Nitrogen Discharges).</p> <p>To address U.S. EPA’s concerns, DEQ has included additional clarifying information in the Fact Sheet:</p> <ol style="list-style-type: none"> <li>1. That a VPDES Individual Permit is a prerequisite for registration under the general permit regulation.</li> <li>2. That while the general permit sets the minimum required sampling and reporting frequencies for nutrient load monitoring, monitoring frequencies included in Individual Permits are evaluated on a case-by-case basis and may be more frequent in order to address technology-based, local TMDL-based, and/or water quality-based effluent limitations.</li> <li>3. That facilities issued VPDES Individual Permits on or after July 1, 2005, that fall into the two design flow ranges with monitoring</li> </ol>
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		<p>frequency updates (0.5-0.99 and 1.0-4.99 MGD) are also subject to technology-based concentration limits based on <a href="#">9VAC25-40-70</a> A 3 b or 4.</p> <ol style="list-style-type: none"> <li>4. That both VPDES Individual Permits and general permit regulations include requirements to take samples and measurements that are representative of the monitoring activity.</li> <li>5. That where concerns about sample shopping or biases arise, they may be addressed on a case-by-case basis by DEQ's Compliance program.</li> </ol>
<p>Mr. Ignatius Mutoti, Retaw Engineering</p>	<p>My comment is appreciating the design aspect. I've helped a lot of clients with designing and investment in newer technologies that are working very effectively in complying with nutrient wasteload allocations. Facilities are unsure of how to proceed, particularly with expansion. Facilities that probably have nutrient allocations that have been terminated, so what happened to that list of nutrient allocations? There is real economic damage when investments are made based on allocations that are not there. What is the way forward and can this be restored? These are the comments I get from the clients I represent.</p>	<p>For the 2027 reissuance, Part I B 4, Termination of a wasteload allocation, has been added to 9VAC25-820-70 to clarify what happens to a wasteload allocation when a facility's permit is terminated or expires without consolidation of wasteload allocations with another facility. This part was added in response to comments received during the Technical Advisory Committee meetings.</p> <p>9VAC25-820-70 Part II B currently provides options for the acquisition of a wasteload allocation. Part II B 1 c and d specify that:</p> <ol style="list-style-type: none"> <li>c. Until such time as the department finds that no allocations are reasonably available in an individual tributary, acquisition of allocations through payments made into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia; or</li> <li>d. Acquisition of allocations through such other means as may be approved by the department on a case-by-case basis.</li> </ol> <p>No additional changes are being made to the regulation in response to this comment.</p>
<p>Mr. Chris Pomeroy, Virginia Association of Municipal Wastewater Agencies (VAMWA)</p>	<p>VAMWA is comprised of 65 of the larger utilities statewide. VAMWA was the principal proponent, of the 2005 legislation under which today's permit is being reissued. This has been a key part of our nutrient trading program success over the past twenty years. This is a very complex and important program to the</p>	<p>Thank you for your comment.</p> <p>No changes are being made to the regulation in response to this comment.</p>

	<p>Commonwealth. VAMWA supports the Department's actions, appreciates the collaborative committee process the Department has run, and the way that the Department has given the committee members an opportunity to participate and bring our ideas. Again, VAMWA supports the reissuance of the permit and all of the collaboration behind the reissuance.</p>	
<p>G. Anne Richardson, Chief, Rappahannock Tribe of Virginia</p>	<p>The Rappahannock Tribe is taking this public comment opportunity to advocate for greater Tribal involvement in granting permits affecting the Chesapeake Bay.</p> <p>Governance of the Chesapeake Bay is managed by the states that comprise it, all of whom are participants in the Chesapeake Bay Program, which released the Chesapeake Bay Agreement. Consequently, the State of Virginia created the Virginia Chesapeake Bay Nutrient and Sediment Reduction Strategy. Throughout the creation, implementation, and ongoing changes to Chesapeake Bay governance, Tribal involvement has remained limited. As a sovereign nation within the Bay, the Rappahannock Tribe sees its lack of involvement in these matters as unacceptable. To that end, the Tribe has been advocating for the Chesapeake Bay Program to work towards developing policies to include Tribes.</p> <p>At the state level, there is also a need for greater Tribal involvement in matters affecting the Chesapeake Bay. Chapter 830 (<i>sic</i>) of the Virginia Code does not currently mandate consultation for VPDES permits. The omission of permits affecting surface water from this Code is unfortunate and steps must be taken to amend as appropriate. As the Tribe takes these steps, it is necessary for DEQ to begin developing a more productive and collaborative relationship with the Tribes of Virginia.</p> <p>In the future, the Tribe expects to have a greater degree of cooperation between the State of Virginia, its DEQ, and the Chesapeake Bay Program. General permits, which affect Tribal resources, including the Chesapeake Bay, must include Tribal input and guidance. The</p>	<p>DEQ welcomes the Tribe's perspective and collaboration in protecting the resources of the Chesapeake Bay and the Commonwealth. Public engagement plays an essential role in developing regulations that are scientifically sound, legally robust, and responsive to diverse perspectives.</p> <p>DEQ is currently working on ways to enhance collaboration with the federally recognized tribal nations across the watershed in accordance with the Chesapeake Executive Council's Charge to the Principals' Staff Committee published December 2, 2025.</p> <p>Please reach out to DEQ for any comments or questions regarding this general permit, which the Board is required to issue pursuant § 62.1-44.19:14 et seq. of the Code of Virginia.</p> <p>No changes are being made to the regulation in response to this comment.</p>

	Tribe urges DEQ to take steps to enhance its relationship with the Tribal Nations of Virginia.	
<b>Enhesa</b> Reagan Ferris Consultant	In this regulation, there is a unit of measurement in the Sample Type and Collection Frequency table (HC). I see no definition of HC within the regulation or anywhere online. Could you please clarify what HC means?	<p>HC means "Hour composite"</p> <p>An hour composite sample is a combination of individual samples, taken proportional to flow, obtained at hourly or smaller time intervals for the entire discharge of the monitored period.</p> <p>HC = Hour Composite has been added to the table in 9VAC-25-820-70 Part I.E.1 for clarity.</p>

**Details of Changes Made Since the Previous Stage**

*List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.*

Five changes were made since the previous stage of this action as a result of comments received from CBF and an environmental consultant.

<b>Current chapter-section number</b>	<b>New chapter-section number, if applicable</b>	<b>New requirement from previous stage</b>	<b>Updated new requirement since previous stage</b>	<b>Change, intent, rationale, and likely impact of updated requirements</b>
	9VAC25-820-70 Part I B 4	Consolidation of mass load limits from two or more facilities discharging into different tributaries	* Removed condition allowing consolidation of mass load limits from two or more facilities discharging into different tributaries from this regulatory action.	This change has been made in response to a comment from the CBF. DEQ acknowledges that state law does not currently address nor prohibit the transfer of wasteload allocation across tributaries; however, it does authorize the transfer of nutrient credits between certain tributaries (§ 62.1-44.19:18 A 1 ii). DEQ concurs that there may be additional regulatory barriers to implementing the regulatory language as proposed. As such, the proposed language has been removed from the final amendments. By

				removing the proposed amendment from the final regulation, there will be no change in the existing requirements or alternatives for members of the regulated community.
9VAC25-820-70 Part I B 4 and I B 5	9VAC25-820-70 Part I B 5, I B 6 and I B 7		Renumbered as Part. I B 4, I B 5 and I B 6	Renumbered due to the removal of Part I B 4 (consolidation of mass load limits from two or more facilities discharging into different tributaries ), as proposed, from the final amendments.
9VAC25-820-70 Part I E 1			Added HC = Hour Composite to define term used in table.	This change has been made in response to a comment from an environmental consultant. It provides clarity and improves understanding.
9VAC25-820-70 Part I G 1 a		Registration statement due date listed as November 1, 2026.	Revised date to November 1, 2031	This change has been made to correct the due date of the Registration Statement submittal for the new reissuance cycle.
9VAC25-820-70 Part II B			Acquisition of wasteload allocations [ <u>or annual point source credits</u> ]. Wasteload allocations [ <u>or annual point source credits</u> ] required by this section to offset new or increased delivered total nitrogen and total phosphorus loads shall be acquired in accordance with this section.	This change has been made in response to comments from the CBF. The regulatory language has been revised to improve clarity.
9VAC25-820-70 Part II B 1			Such allocations [ <u>or annual point source credits</u> ] may be acquired from or a combination of the following:	This change has been made in response to comments from the CBF. The regulatory language has been revised to improve clarity.

**Details of All Changes Proposed in this Regulatory Action**

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-820-10		Definitions	<p>The definition of “Board” was removed because the term has been replaced by “department” throughout the regulation. This reflects a change in law, Chapter 356 of the 2022 Acts of Assembly, that shifted responsibilities from the Board to the department.</p> <p>Added a definition for “Nutrient Offset Fund” because this term is referenced in the regulation but not previously defined.</p>
9VAC25-820-15		Applicability of incorporated references based on the dates that they become effective.	<p>Revised date of incorporation by reference of 40 CFR from July 1, 2014, to July 1, 2025, to maintain consistency with federal regulations.</p> <p>This section will be updated to the most recent published version of Title 40 of the CFR prior to reissuing the general permit regulation.</p>
9VAC25-820-20		Purpose, applicability; General Permit	Revised title of the regulation for clarity and brevity.
9VAC25-820-40 A		<p>Compliance Plans</p> <p>Requires submittal of a compliance plan by February 1, 2023, for facilities identified in 9VAC25-820-80 A and by no later than January 1, 2026, for facilities listed in 9VAC25-820-80 B.</p>	<p>Removed current “compliance dates.” The existing dates are no longer relevant because the effective date of the reissued general permit is after the current compliance date.</p>
9VAC25-820-40 B	9VAC25-820-40	Requires submission of annual compliance plan updates to DEQ.	This subsection has been renumbered to reflect the deletion of the compliance dates that had been in subsection A. There are no changes to the requirement.

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-820-70		General Permit	<p>The term “board” was changed to “department” throughout the regulation in response to Chapter 356 of the 2022 Acts of Assembly.</p> <p>Revised to reflect the new permit term and title.</p>
9VAC25-820-70 Part I A 1		Authorization to discharge for owners of facilities that submit a timely registration statement.	Updated the date of timely registration statement submittal from November 1, 2021, to November 1, 2026, to reflect a new reissuance cycle of the general permit and clarify that authorization to discharge begins upon approval of the registration statement by the department.
9VAC25-820-70 Part I A 3 a		Continuation of permit coverage	Updated the date of timely registration statement submittal from November 1, 2026 to November 1, 2031, to reflect continuation of coverage of the 2027 permit into the 2032 term if a timely registration statement is received.
9VAC25-820-70 Part I A 3 b		Continuation of permit coverage	Updated the date of the general permit references from 2017 to 2022 to refer to the last permit issuance for enforcement action when the owner that was covered under the expiring or expired general permit.
9VAC-820-70 Part I B 3		<p>Wasteload allocations</p> <p>Authorizes an owner that consolidates two or more facilities discharging to the same tributary into a single regional facility to receive aggregated mass nutrient load limits.</p>	<p>Replaced the word “aggregate” with “consolidated” mass load limit.</p> <p>Removed the term “regional” referring to the receiving facility. The changes clarify the situation where an owner diverts the discharge flow from two or more facilities to a single facility in the same tributary, in contrast with Part I.B.2 which addresses “aggregate load limits” for individual facilities under common ownership.</p> <p>This change has been applied to subdivisions a through e to improve clarity and understanding.</p>
	9VAC25-820-70 Part I B 4	None	Termination of a wasteload allocation. Added the subdivision to clarify what happens to a wasteload allocation when a facility’s permit is terminated or allowed to expire without flow diversion to another facility. The addition provides certainty for facilities

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			when their individual and general permits are terminated or expire.
9VAC25-820-70 Part I B 4	9VAC25-820-70 Part I B 5	Apportionment of nutrient load in intake water	Updated the section number (changing B 4 to B 5) to reflect the addition of new section B 4, Termination of wasteload allocation. The current requirement related to total loads have not changed.
9VAC25-820-70 Part I B 5	9VAC25-820-70 Part I B 6	Bioavailability	Updated the section number (changing B 5 to B 6) to reflect the addition of new section B 4, Termination of wasteload allocation. The current requirement related to bioavailability has not changed.
9VAC25-820-70 Part I C 1		Schedules of compliance pertaining to the TN and TP load allocations that apply to facilities listed in 9VAC25-820 –80 A.	Removed reference to the facilities listed in 9VAC25-720-120 as they have already met compliance. Removed reference to the facilities listed in 9VAC25-820-80 B as they will meet compliance by the end of the current permit cycle.
9VAC25-820-70 Part I C 3		Schedule of compliance pertaining to facilities listed in 9VAC25-820-80 B.	Removed language referring to compliance dates that will have passed by the date of reissuance of the general permit.
9VAC25-820-70 Part I E 1		Monitoring Requirements	<p>Table columns were re-ordered to list the design flow ranges from lowest to highest to improve readability of the information displayed in the table.</p> <p>Split the 1.0-19.999 million gallons daily (MGD) Design Flow range into 1.0-4.99 MGD and 5.0-19.999 MGD, with the respective effluent TN and TP industrial load limits.</p> <p>Added 1 day/week 24 HC monitoring frequency for the 1.0-4.99 MGD flow range (it had been 2 day/week 24 HC when the range was 1.0 to 19.999 MGD).</p> <p>Changed 0.5-0.999 MGD monitoring frequency from 8 HC 2 days/week to 8 HC 1 day/week.</p> <p>These changes are in response to a TAC member’s recommendation and are based on a statistical analysis that demonstrates that a monitoring frequency of 1 day/week for the</p>

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			<p>design flow ranges of 0.5-0.999 MGD and 1.0-4.99 MGD is sufficient to capture loading variability for accurate accounting of annual loads.</p> <p>Added HC = Hour Composite to specify the term used in the table.</p> <p>The changes improve clarity and understanding. They also reduce the monitoring frequency for some facilities while maintaining sufficient requirements and review to ensure compliance with permit conditions.</p>
9VAC25-820-70 Part I E 4		Data reporting	The phrase " <u>without rounding</u> " has been added to clarify the formula used to calculate total monthly load and for consistency with calculations used in VPDES Individual Permits.
	9VAC25-820-70 Part I E 6	Monthly average concentration reporting	Incorporated language from the VPDES individual permit for the reporting procedures of monthly average concentrations for TP, TKN and nitrate + nitrite. This provides clarity and consistency with the VPDES individual permits which are issued pursuant to the department's authority in the VPDES Permit Regulation, 9VAC25-31.
9VAC25-820-70 Part I G 1 a		November 1, 2016	Updated to November 1, 2031, to reflect a new reissuance cycle of the general permit.
9VAC25-820-70 Part I G 1 b		Requirement to Register	Minor editorial revisions to clarify requirements for registration statements.
9VAC25-820-70 Part I H		Registration statement	Minor editorial revisions to clarify requirements for registration statements. Removed the requirement to provide a fax number as the use of a fax as a means of communication has been replaced by email and other options.
9VAC25-820-70 Part I J 3		Credit acquisitions from the Nutrient Offset Fund	<p>Updating the cost of credits per pound of nitrogen from \$5.08 to \$9.23 and per pound of phosphorus from \$11.15 to \$20.26.</p> <p>The cost of credits per pound of nitrogen was updated based on DEQ's 2022 Pay-For-Outcomes Nonpoint Source Pollution Reduction</p>

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
			<p>Grant Program that created a market for the purchase of nitrogen credits from the affected sewage treatment facilities. The average cost of \$8.58 per pound of nitrogen is the price that producers of credits were willing to sell the annual reductions considering all their costs. The 2022 cost (\$8.58) was adjusted for inflation using the CPI (July 2022 – July 2025 CPI-U Washington Arlington-Alexandria, DC-VA-MDWV) (299.937 – 322.730). The cost of credits per pound of phosphorus (\$11.15) was adjusted using the same ratio of change experienced by the cost nitrogen credits.</p>
<p>9VAC25-820-70 Part II B 1 a</p>		<p>Acquisition of wasteload allocations</p>	<p>Added reference to the option of obtaining point source credits through the Virginia Nutrient Credit Exchange Association.</p> <p>Added language to specify that “annual point source credits” can be used to offset new or increased TN and TP loads. The regulatory language provides clarity and improves understanding for the regulated community.</p>
<p>9VAC25-820-70 Part III I 1 and 2</p>		<p>Reports of noncompliance: The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.</p>	<p>Revised language to clarify reporting requirements by adding the phrase “or online” to allow the option of electronic reporting.</p>
<p>9VAC25-820-70 Part III I 3</p>		<p>Reports of noncompliance: The permittee shall report any noncompliance that may adversely affect state waters or may endanger public health.</p>	<p>Revised language to specify that reports outside of normal working hours shall be submitted using the online portal (instead of leaving a message). Updated the contact for emergencies to the Virginia Emergency Operations Center to be consistent with updates in state reporting requirements. The changes clarify and simplify the reporting requirements.</p>
<p>9VAC25-820-80 A</p>	<p>9VAC25-820-80</p>	<p>Facilities subject to reduced individual total nitrogen and total phosphorus wasteload</p>	<p>Removed Hampton Roads Sanitation District – York River Sewage Treatment Plant as this facility has</p>

Current section number	New section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
		allocations – Enhanced Nutrient Removal Certainty (ENRC) Program Facilities	already met compliance with the ENRC reduced wasteload allocation.
9VAC25-820-80 B		Facilities subject to reduced individual total nitrogen and total phosphorus wasteload allocations – Chlorophyll-a based total phosphorus wasteload allocations	Removed. All facilities listed have achieved compliance or will achieve compliance by the expiration date of the current 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) 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.*

As §62.1-44.19:14 of the Code of Virginia directs the Board to issue this regulation, there are no viable alternative regulatory methods that will accomplish the objectives of the applicable law.

**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.*

This general permit applies to point source discharges of total nitrogen and total phosphorus, to the Chesapeake Bay or its tributaries and has been designed to minimize burden while achieving a level of water quality protection consistent with state and federal requirements. This regulatory action does not address and will have no impact on 1) authority and rights of parents, 2) economic self-sufficiency, self-pride, or assumption of familial responsibilities, 3) marital commitments, or 4) disposable family income.

1 **Project 8010 - Final**

2 **State Water Control Board**

3 **CH 820-2026 Amendment and Reissuance of the Existing Regulation**

4 Chapter 820

5 ~~General Virginia Pollutant Discharge Elimination System (VPDES) Watershed~~ General Permit  
6 ~~Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient~~ Discharges and  
7 ~~Trading in the Chesapeake Bay Watershed in Virginia~~

8 **9VAC25-820-10. Definitions.**

9 Except as defined ~~below~~ in this section, the words and terms used in this chapter shall have  
10 the meanings defined in the Virginia Pollutant Discharge Elimination System (VPDES) Permit  
11 Regulation (9VAC25-31).

12 "Annual mass load of total nitrogen" (expressed in pounds per year) means the sum of the  
13 total monthly loads for all of the months in one calendar year. See Part I E 4 of the general  
14 permit in 9VAC25-820-70 for calculating total monthly load.

15 "Annual mass load of total phosphorus" (expressed in pounds per year) means the sum of  
16 the total monthly loads for all of the months in one calendar year. See Part I E 4 of the general  
17 permit in 9VAC25-820-70 for calculating total monthly load.

18 "Association" means the Virginia Nutrient Credit Exchange Association authorized by § 62.1-  
19 44.19:17 of the Code of Virginia.

20 "Attenuation" means the rate at which nutrients are reduced through natural processes  
21 during transport in water.

22 ~~"Board" means the Virginia State Water Control Board or State Water Control Board. When~~  
23 ~~used outside the context of the promulgation of regulations, including regulations to establish~~  
24 ~~general permits, "board" means the Department of Environmental Quality.~~

25 "Delivered total nitrogen load" means the discharged mass load of total nitrogen from a point  
26 source that is adjusted by the delivery factor for that point source.

27 "Delivered total phosphorus load" means the discharged mass load of total phosphorus from  
28 a point source that is adjusted by the delivery factor for that point source.

29 "Delivery factor" means an estimate of the number of pounds of total nitrogen or total  
30 phosphorus delivered to tidal waters for every pound discharged from a facility, as determined  
31 by the specific geographic location of the facility, to account for attenuation that occurs during  
32 riverine transport between the facility and tidal waters. Delivery factors shall be calculated using  
33 the Chesapeake Bay Program watershed model. For the purpose of this regulation, delivery  
34 factors with a value greater than 1.00 in the Chesapeake Bay Program watershed model shall  
35 be considered to be equal to 1.00.

36 "Department" or "DEQ" means the Department of Environmental Quality.

37 "Director" means the director of the Department of Environmental Quality.

38 "Eastern Shore trading ratio" means the ratio of pounds of point source credits from another  
39 tributary that can be acquired and applied by the owner of a facility in the Eastern Shore Basin  
40 for every pound of point source total nitrogen or total phosphorus discharged from the Eastern  
41 Shore Basin facility. Trading ratios are expressed in the form "credits supplied: credits  
42 received."

43 "Equivalent load" means:

44 2,300 pounds per year of total nitrogen or 300 pounds per year of total phosphorus  
45 discharged by an industrial facility are considered equivalent to the load discharged from  
46 sewage treatment works with a design capacity of 0.04 million gallons per day,

47 5,700 pounds per year of total nitrogen or 760 pounds per year of total phosphorus  
48 discharged by an industrial facility are considered equivalent to the load discharged from  
49 sewage treatment works with a design capacity of 0.1 million gallons per day, and

50 28,500 pounds per year of total nitrogen or 3,800 pounds per year of total phosphorus  
51 discharged by an industrial facility are considered equivalent to the load discharged from  
52 sewage treatment works with a design capacity of 0.5 million gallons per day.

53 "Existing facility" means a facility (i) subject to a current individual VPDES permit from which  
54 a discharge has commenced or for which its owner has received a Certificate to Construct (for  
55 sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities) for  
56 the treatment works used to derive its wasteload allocation on or before July 1, 2005, or (ii) for  
57 which the owner has a wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C,  
58 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality  
59 Management Planning Regulation. Existing facility shall also mean and include any facility, not  
60 subject to an individual VPDES permit, for which its owner holds a separate wasteload  
61 allocation in 9VAC25-720-120 C of the Water Quality Management Planning Regulation.

62 "Expansion" or "expands" means (i) initiating construction at an existing treatment works  
63 after July 1, 2005, to increase design flow capacity, except that the term does not apply in those  
64 cases where a Certificate to Construct (for sewage treatment works, or equivalent DEQ  
65 approval for discharges from industrial facilities) was issued on or before July 1, 2005, or (ii)  
66 industrial production process changes or the use of new treatment products at industrial  
67 facilities that increase the annual mass load of total nitrogen or total phosphorus above the  
68 wasteload allocation.

69 "Facility" means a point source from which a discharge or proposed discharge of total  
70 nitrogen or total phosphorus to the Chesapeake Bay or its tributaries exists. This term does not  
71 include confined animal feeding operations, discharges of storm water, return flows from  
72 irrigated agriculture, or vessels.

73 "General permit" means this general permit authorized by § 62.1-44.19:14 of the Code of  
74 Virginia.

75 "Industrial facility" means any facility (as defined above) other than sewage treatment works.

76 "Local water quality-based limitations" means limitations intended to protect local water  
77 quality including applicable total maximum daily load (TMDL) allocations, applicable Virginia  
78 Pollution Discharge Elimination System (VPDES) permit limits, applicable limitations set forth in  
79 water quality standards established under § 62.1-44.15 (3a) of the Code of Virginia, or other  
80 limitations as established by the State Water Control Board.

81 "New discharge" means any discharge from a facility that did not commence prior to July 1,  
82 2005, except that the term does not apply in those cases where a Certificate to Construct (for  
83 sewage treatment works, or equivalent DEQ approval for discharges from industrial facilities)  
84 was issued to the facility on or before July 1, 2005.

85 "Nonsignificant discharger" means (i) a sewage treatment works discharging to the  
86 Chesapeake Bay watershed downstream of the fall line with a design capacity of less than 0.1  
87 million gallons per day, or less than an equivalent load discharged from industrial facilities, or (ii)  
88 a sewage treatment works discharging to the Chesapeake Bay watershed upstream of the fall  
89 line with a design capacity of less than 0.5 million gallons per day, or less than an equivalent  
90 load discharged from industrial facilities.

91 "Nutrient Offset Fund" means a special nonreverting fund as established under § 10.1-  
92 2128.2 of the Code of Virginia.

93 "Offset" means to acquire an annual wasteload allocation of total nitrogen or total  
94 phosphorus for a new or expanding facility to ensure that there is no net increase of nutrients  
95 into the affected tributary of the Chesapeake Bay.

96 "Permitted design capacity" or "permitted capacity" means the allowable load (pounds per  
97 year) assigned to an existing facility that is a nonsignificant discharger and that does not have a  
98 wasteload allocation listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C,  
99 9VAC25-720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning  
100 Regulation. The permitted design capacity is calculated based on the design flow and installed  
101 nutrient removal technology (for sewage treatment works, or equivalent discharge from  
102 industrial facilities) at a facility that has either commenced discharge, or for which an owner has  
103 received a Certificate to Construct (for sewage treatment works, or equivalent DEQ approval for  
104 discharges from industrial facilities) prior to July 1, 2005. This mass load is used for (i)  
105 determining whether the owner of the expanding facility must offset additional mass loading of  
106 nitrogen and phosphorus and (ii) determining whether the owner of the facility must acquire  
107 credits at the end of a calendar year. For the purpose of this chapter, owners of facilities that  
108 have installed secondary wastewater treatment (intended to achieve BOD and TSS monthly  
109 average concentrations equal to or less than 30 milligrams per liter) are assumed to achieve an  
110 annual average total nitrogen effluent concentration of 18.7 milligrams per liter and an annual  
111 average total phosphorus effluent concentration of 2.5 milligrams per liter. Permitted design  
112 capacities for facilities that, before July 1, 2005, were required to comply with more stringent  
113 nutrient limits shall be calculated using the more stringent values.

114 "Permitted facility" means a facility whose owner is authorized by this general permit to  
115 discharge total nitrogen or total phosphorus. For the sole purpose of generating point source  
116 nitrogen credits or point source phosphorus credits, "permitted facility" shall also mean the Blue  
117 Plains wastewater treatment facility operated by the District of Columbia Water and Sewer  
118 Authority.

119 "Permittee" means a person authorized by this general permit to discharge total nitrogen or  
120 total phosphorus.

121 "Point source nitrogen credit" means the difference between (i) the wasteload allocation for  
122 a permitted facility specified as an annual mass load of total nitrogen and (ii) the monitored  
123 annual mass load of total nitrogen discharged from that facility, where clause (ii) is less than  
124 clause (i), and where the difference is adjusted by the applicable delivery factor and expressed  
125 as pounds per year of delivered total nitrogen load.

126 "Point source phosphorus credit" means the difference between (i) the wasteload allocation  
127 for a permitted facility specified as an annual mass load of total phosphorus and (ii) the  
128 monitored annual mass load of total phosphorus discharged from that facility, where clause (ii)  
129 is less than clause (i), and where the difference is adjusted by the applicable delivery factor and  
130 expressed as pounds per year of delivered total phosphorus load.

131 "Quantification level" or "QL" means the minimum levels, concentrations, or quantities of a  
132 target variable (e.g., target analyte) that can be reported with a specified degree of confidence  
133 in accordance with 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or  
134 1VAC30-46, Accreditation for Commercial Environmental Laboratories.

135 "Registration list" means a list maintained by the department indicating all facilities that are  
136 registered for coverage under this general permit, by tributary, including their wasteload  
137 allocations, permitted design capacities, and delivery factors as appropriate.

138 "Significant discharger" means the owner of (i) a sewage treatment works discharging to the  
139 Chesapeake Bay watershed upstream of the fall line with a design capacity of 0.5 million gallons

140 per day or greater, or an equivalent load discharged from industrial facilities; (ii) a sewage  
141 treatment works discharging to the Chesapeake Bay watershed downstream of the fall line with  
142 a design capacity of 0.1 million gallons per day or greater, or an equivalent load discharged  
143 from industrial facilities; (iii) a planned or newly expanding sewage treatment works discharging  
144 to the Chesapeake Bay watershed upstream of the fall line that was expected to be in operation  
145 by December 31, 2010, with a permitted design of 0.5 million gallons per day or greater, or an  
146 equivalent load to be discharged from industrial facilities; or (iv) a planned or newly expanding  
147 sewage treatment works discharging to the Chesapeake Bay watershed downstream of the fall  
148 line that was expected to be in operation by December 31, 2010, with a design capacity of 0.1  
149 million gallons per day or greater, or an equivalent load to be discharged from industrial  
150 facilities.

151 "State-of-the-art nutrient removal technology" means (i) technology that will achieve an  
152 annual average total nitrogen effluent concentration of three milligrams per liter and an annual  
153 average total phosphorus effluent concentration of 0.3 milligrams per liter or (ii) equivalent load  
154 reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as  
155 determined by the department.

156 "Tributaries" means those river basins listed in the Chesapeake Bay TMDL and includes the  
157 Potomac, Rappahannock, York, and James River Basins and the Eastern Shore Basin, which  
158 encompasses the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13  
159 and drain into the Chesapeake Bay.

160 "VPDES" means Virginia Pollutant Discharge Elimination System.

161 "Wasteload allocation" means the most limiting of (i) the water quality-based annual mass  
162 load of total nitrogen or annual mass load of total phosphorus allocated to individual facilities  
163 pursuant to 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and  
164 9VAC25-720-120 C of the Water Quality Management Planning Regulation or its successor, or  
165 permitted capacity in the case of nonsignificant dischargers; (ii) the water quality-based annual  
166 mass load of total nitrogen or annual mass load of total phosphorus acquired pursuant to §  
167 62.1-44.19:15 of the Code of Virginia for new or expanded facilities; or (iii) applicable total  
168 nitrogen or total phosphorus wasteload allocations under the Chesapeake Bay total maximum  
169 daily loads (TMDLs) to restore or protect the water quality and beneficial uses of the  
170 Chesapeake Bay or its tidal tributaries.

171 **9VAC25-820-15. Applicability of incorporated references based on the dates that they**  
172 **became effective.**

173 Except as noted, when a regulation of the U.S. Environmental Protection Agency set forth in  
174 Title 40 of the Code of Federal Regulations (CFR) is referenced or adopted in this chapter and  
175 incorporated by reference, that regulation shall be as it exists and has been published as of July  
176 1, 2014; however, references to 40 CFR Part 136 are incorporated as published in the July 1,  
177 2024, update 2025.

178 **9VAC25-820-20. Purpose, applicability.**

179 A. This regulation fulfills the statutory requirement for the ~~General~~ VPDES ~~Watershed~~  
180 ~~General~~ Permit for ~~Total Nitrogen and Total Phosphorus discharges and nutrient trading~~  
181 ~~Nutrient Discharges and Trading~~ in the Chesapeake Bay watershed ~~Watershed~~ issued by the  
182 ~~board~~ State Water Control Board pursuant to the Clean Water Act (33 USC § 1251 et seq.) and  
183 § 62.1-44.19:14 of the Code of Virginia.

184 B. This general permit regulation governs owners of facilities holding individual VPDES  
185 permits or otherwise meeting the definition of "existing facility" that discharge or propose to  
186 discharge total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries.

187 **9VAC25-820-40. Compliance plans.**

188 A. ~~By February 1, 2023, every owner of a facility subject to reduced individual total nitrogen~~  
189 ~~or total phosphorous wasteload allocations as identified in 9VAC25-820-80 shall either~~  
190 ~~individually or through the Virginia Nutrient Credit Exchange Association submit compliance~~  
191 ~~plans to the department for approval.~~

192 1. ~~For facilities listed in 9VAC25-820-80 A, compliance with reduced wasteload~~  
193 ~~allocations established by the Enhanced Nutrient Removal Certainty Program shall be~~  
194 ~~on the effective date of the reduced allocations as established in 9VAC25-720-60 and~~  
195 ~~9VAC25-720-120. For facilities listed in 9VAC25-820-80 B, compliance with chlorophyll-~~  
196 ~~a based total phosphorus wasteload allocations shall be achieved as soon as possible,~~  
197 ~~but no later than January 1, 2026. The compliance plans shall contain any capital~~  
198 ~~projects and implementation schedules needed to achieve total nitrogen and phosphorus~~  
199 ~~reductions sufficient to comply with the individual and combined wasteload allocations of~~  
200 ~~all the permittees in the tributary. Permittees submitting individual plans are not required~~  
201 ~~to account for other facilities' activities.~~

202 2. ~~As part of the compliance plan development for facilities listed in 9VAC25-820-80 B,~~  
203 ~~permittees shall either:~~

204 a. ~~Demonstrate that the additional capital projects anticipated by subdivision 1 of this~~  
205 ~~subsection are necessary to ensure continued compliance with these allocations by~~  
206 ~~January 1, 2026, or~~

207 b. ~~Request that their individual wasteload allocations become effective on January 1,~~  
208 ~~2023.~~

209 3. ~~The compliance plans may rely on the exchange of point source credits in accordance~~  
210 ~~with this general permit, but not the acquisition of credits through payments into the~~  
211 ~~Nutrient Offset Fund (§ 10.1-2128.2 of the Code of Virginia), to achieve compliance with~~  
212 ~~the individual and combined wasteload allocations in each tributary.~~

213 B. Every owner of a facility required to submit a registration statement shall either  
214 individually or through the Virginia Nutrient Credit Exchange Association submit annual  
215 compliance plan updates to the department for approval as required by Part I D of the general  
216 permit.

217 **9VAC25-820-70. General permit.**

218 Any owner whose registration statement is accepted by the ~~board~~ department will receive  
219 the following general permit and shall comply with the requirements of the general permit.

220 General Permit No.: VAN000000  
221 Effective Date: January 1, ~~2022~~ 2027  
222 Expiration Date: December 31, ~~2026~~ 2031

223 GENERAL PERMIT FOR TOTAL NITROGEN AND TOTAL PHOSPHORUS NUTRIENT  
224 DISCHARGES AND NUTRIENT TRADING IN THE CHESAPEAKE BAY WATERSHED  
225 IN VIRGINIA  
226 AUTHORIZATION TO DISCHARGE UNDER THE VIRGINIA POLLUTANT DISCHARGE  
227 ELIMINATION SYSTEM AND THE VIRGINIA STATE WATER CONTROL LAW

228 In compliance with the provisions of the Clean Water Act, as amended, and pursuant to the  
229 State Water Control Law and regulations adopted pursuant to it, owners of facilities holding a  
230 VPDES individual permit or owners of facilities that otherwise meet the definition of an existing  
231 facility, with total nitrogen or total phosphorus discharges, or both to the Chesapeake Bay or its

232 tributaries, are authorized to discharge to surface waters and exchange credits for total nitrogen  
233 or total phosphorus, or both.

234 The authorized discharge shall be in accordance with the registration statement filed with  
235 DEQ, this cover page, Part I-Special Conditions Applicable to All Facilities, Part II-Special  
236 Conditions Applicable to New and Expanded Facilities, and Part III-Conditions Applicable to All  
237 VPDES Permits, as set forth herein.

## 238 PART I

### 239 SPECIAL CONDITIONS APPLICABLE TO ALL FACILITIES

#### 240 A. Authorized activities.

##### 241 1. Authorization to discharge for owners of facilities required to register.

242 a. Every owner of a facility required to submit a registration statement to the  
243 department by November 1, ~~2024~~ 2026, and thereafter upon the reissuance of this  
244 general permit, shall be authorized to discharge total nitrogen and total phosphorus  
245 subject to the requirements of this general permit upon the department's approval of  
246 the registration statement.

247 b. Any owner of a facility required to submit a registration statement with the  
248 department ~~at the time he makes application with the department~~ for a new  
249 discharge or expansion that is subject to an offset or technology-based requirement  
250 in Part II of this general permit, shall be authorized to discharge total nitrogen and  
251 total phosphorus subject to the requirements of this general permit upon the  
252 department's approval of the registration statement.

253 c. Upon the department's approval of the registration statement, a facility will be  
254 included in the registration list maintained by the department.

255 2. Authorization to discharge for owners of facilities not required to register. Any owner  
256 of a facility authorized by a VPDES permit and not required by this general permit to  
257 submit a registration statement shall be deemed to be authorized to discharge total  
258 nitrogen and total phosphorus under this general permit at the time it is issued. Owners  
259 of facilities that are deemed to be permitted under this subsection shall have no  
260 obligation under this general permit prior to submitting a registration statement and  
261 securing coverage under this general permit based upon such registration statement.

##### 262 3. Continuation of permit coverage.

263 a. Any owner authorized to discharge under this general permit and who submits a  
264 complete registration statement for the reissued general permit by November 1, ~~2026~~  
265 2031, in accordance with Part III M or who is not required to register in accordance  
266 with Part I A 2 is authorized to continue to discharge under the terms of this general  
267 permit until such time as the ~~board~~ department either:

268 (1) Issues coverage to the owner under the reissued general permit, or

269 (2) Notifies the owner that the discharge is not eligible for coverage under this  
270 general permit.

271 b. When the owner that was covered under the expiring or expired general permit  
272 has violated or is violating the conditions of that permit, the ~~board~~ department may  
273 choose to do any or all of the following:

274 (1) Initiate enforcement action based upon the ~~2017~~ 2022 general permit,

275 (2) Issue a notice of intent to deny coverage under the reissued general permit. If the  
276 general permit coverage is denied, the owner would then be required to cease the  
277 discharges authorized by the administratively continued coverage under the terms of

278 the ~~2017~~ 2022 general permit or be subject to enforcement action for operating  
279 without a permit, or

280 (3) Take other actions authorized by the State Water Control Law.

281 B. Wasteload allocations.

282 1. Wasteload allocations allocated to permitted facilities pursuant to 9VAC25-720-50 C,  
283 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C of  
284 the Water Quality Management Planning Regulation, or applicable TMDLs, or wasteload  
285 allocations acquired by owners of new and expanding facilities to offset new or  
286 increased delivered total nitrogen and delivered total phosphorus loads from a new  
287 discharge or expansion under Part II B of this general permit, and existing loads  
288 calculated from the permitted design capacity of expanding facilities not previously  
289 covered by this general permit, shall be incorporated into the registration list maintained  
290 by the department. The wasteload allocations contained in this list shall be enforceable  
291 as annual mass load limits in this general permit. Credits shall not be generated by  
292 facilities whose operations were previously authorized by a Virginia Pollution Abatement  
293 (VPA) permit that was issued before July 1, 2005.

294 2. Except as described in subdivisions 2 c and 2 d of this subsection, an owner of two or  
295 more facilities covered by this general permit and discharging to the same tributary may  
296 apply for and receive an aggregated mass load limit for delivered total nitrogen and an  
297 aggregated mass load limit for delivered total phosphorus reflecting the total of the water  
298 quality-based total nitrogen and total phosphorus wasteload allocations or permitted  
299 design capacities established for such facilities individually.

300 a. The permittee (and all of the individual facilities covered under a single  
301 registration) shall be deemed to be in compliance when the aggregate mass load  
302 discharged by the facilities is less than the aggregate mass load limit.

303 b. The permittee will be eligible to generate credits only if the aggregate mass load  
304 discharged by the facilities is less than the total of the wasteload allocations  
305 assigned to any of the affected facilities.

306 c. The aggregation of mass load limits shall not affect any requirement to comply  
307 with local water quality-based limitations.

308 d. Facilities whose operations were previously authorized by a Virginia Pollution  
309 Abatement (VPA) permit that was issued before July 1, 2005, cannot be aggregated  
310 with other facilities under common ownership or operation.

311 e. Operation under an aggregated mass load limit in accordance with this section  
312 shall not be deemed credit acquisition as described in Part I J 2 of this general  
313 permit.

314 3. An owner that consolidates two or more facilities discharging to the same tributary into  
315 a single ~~regional~~ facility may apply for and receive ~~an aggregated~~ a consolidated mass  
316 load limit for total nitrogen and ~~an aggregated~~ a consolidated mass load limit for total  
317 phosphorus, subject to the following conditions:

318 a. ~~Aggregate~~ Consolidated mass load limits will be calculated accounting for delivery  
319 factors in effect at the time of the consolidation.

320 b. If all of the affected facilities have wasteload allocations in 9VAC25-720-50 C,  
321 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C  
322 of the Water Quality Management Planning Regulation, the aggregate consolidated  
323 mass load limit shall be calculated by adding the wasteload allocations of the  
324 affected facilities. ~~The regional facility shall be eligible to generate credits~~ Credits  
325 may be generated based on the consolidated wasteload allocation.

326 c. If any, but not all, of the affected facilities has a wasteload allocation in 9VAC25-  
327 720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-  
328 720-120 C of the Water Quality Management Planning Regulation, the ~~aggregate~~  
329 consolidated mass load limit shall be calculated by adding:

330 (1) Wasteload allocations of those facilities that have wasteload allocations in  
331 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and  
332 9VAC25-720-120 C of the Water Quality Management Planning Regulation;

333 (2) Permitted design capacities assigned to affected industrial facilities; and

334 (3) Loads from affected sewage treatment works that do not have a wasteload  
335 allocation in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-  
336 720-110 C, and 9VAC25-720-120 C of the Water Quality Management Planning  
337 Regulation, defined as the lesser of a previously calculated permitted design  
338 capacity, or the values calculated by the following ~~formulae~~ formulas:

339 Nitrogen Load (lbs/ year) = flow (MGD) x 8.0 mg/l x 8.345 x 365 days/year

340 Phosphorus Load (lbs/ year) = flow (MGD) x 1.0 mg/l x 8.345 x 365 days/year

341 Flows used in the preceding ~~formulae~~ formulas shall be the design flow of the  
342 treatment works from which the affected facility currently discharges.

343 ~~The regional facility shall be eligible to generate credits~~ Credits may be generated  
344 based on the consolidated wasteload allocation.

345 d. If none of the affected facilities have a wasteload allocation in 9VAC25-720-50 C,  
346 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110 C, and 9VAC25-720-120 C  
347 of the Water Quality Management Planning Regulation, the ~~aggregate~~ consolidated  
348 mass load limit shall be calculated by adding the respective permitted design  
349 capacities for the affected facilities.

350 e. Facilities whose operations were previously authorized by a Virginia Pollution  
351 Abatement (VPA) permit that was issued before July 1, 2005, may be consolidated  
352 with other facilities under common ownership or operation, but their allocations  
353 cannot be transferred ~~to the regional facility.~~

354 f. Facilities whose operations were previously authorized by a VPA permit that was  
355 issued before July 1, 2005, can ~~become regional~~ receive effluent from other facilities,  
356 but they cannot receive additional allocations beyond those permitted in Part II B 1 d  
357 of this general permit.

358 ~~4. [ An owner that consolidates two or more facilities discharging into different tributaries~~  
359 ~~may apply for a consolidated mass load limit for total nitrogen and a consolidated mass~~  
360 ~~load limit for total phosphorus. The department will evaluate the request on a case-by-~~  
361 ~~case basis, taking into account the conditions set forth in Part I B 3 a through Part I B 3 d~~  
362 ~~of this section and any additional conditions necessary and appropriate for water quality~~  
363 ~~protection.~~

364 5. ] Termination of a wasteload allocation. If a facility's individual and general permit are  
365 terminated or expire with no consolidation of wasteload allocations, the following shall  
366 apply:

367 a. If a facility has wasteload allocations in 9VAC25-720-50 C, 9VAC25-720-60 C,  
368 9VAC25-720-70 C, 9VAC25-720-110 C, [ and or ] 9VAC25-720-120 C of the Water  
369 Quality Management Planning Regulation, the wasteload allocations shall be  
370 transferred to the Nutrient Offset Fund and the facility removed from the registration  
371 list.

372 b. If a facility has wasteload allocations based on permitted design capacity, the  
373 facility and the wasteload allocations shall be removed from the registration list.

374 4. [ ~~6.~~ 5. ] Unless otherwise noted, the nitrogen and phosphorus wasteload allocations  
375 assigned to permitted facilities are considered total loads, including nutrients present in  
376 the intake water from the river, as applicable. On a case-by-case basis, an industrial  
377 discharger may demonstrate to the satisfaction of the ~~board~~ department that a portion of  
378 the nutrient load originates in ~~its~~ the industrial discharger's intake water. This  
379 demonstration shall be consistent with the assumptions and methods used to derive the  
380 allocations through the Chesapeake Bay models. In these cases, the ~~board~~ department  
381 may limit the permitted discharge to the net nutrient load portion of the assigned  
382 wasteload allocation.

383 ~~5.~~ [ ~~7.~~ 6. ] Bioavailability. Unless otherwise noted, the entire nitrogen and phosphorus  
384 wasteload allocations assigned to permitted facilities are considered to be bioavailable to  
385 organisms in the receiving stream. On a case-by-case basis, a discharger may  
386 demonstrate to the satisfaction of the ~~board~~ department that a portion of the nutrient load  
387 is not bioavailable; this demonstration shall not be based on the ability of the nutrient to  
388 resist degradation at the wastewater treatment plant, but instead, on the ability of the  
389 nutrient to resist degradation within a natural environment for the amount of time that it is  
390 expected to remain in the Chesapeake Bay watershed. This demonstration shall also be  
391 consistent with the assumptions and methods used to derive the allocations through the  
392 Chesapeake Bay models. In these cases, the ~~board~~ department may limit the permitted  
393 discharge to the bioavailable portion of the assigned wasteload allocation.

394 C. Schedule of compliance.

395 1. For facilities listed in [ ~~9VAC25-820-80-A~~ 9VAC25-820-80 ], compliance with reduced  
396 wasteload allocations established by the Enhanced Nutrient Removal Certainty Program  
397 shall be on the effective date of the reduced allocations as established in 9VAC25-720-  
398 60 and ~~9VAC25-720-120~~. ~~For facilities listed in 9VAC25-820-80 B, compliance with~~  
399 ~~chlorophyll a based total phosphorus wasteload allocations shall be achieved as soon as~~  
400 ~~possible but no later than January 1, 2026.~~

401 2. Following submission of compliance plans and compliance plan updates required by  
402 9VAC25-820-40, the ~~board~~ department shall reevaluate the schedule of compliance in  
403 subdivision 1 of this subsection, taking into account the information in the compliance  
404 plans and the factors in § 62.1-44.19:14 C 2 of the Code of Virginia. When warranted  
405 based on such information and factors, the ~~board~~ department shall adjust the schedule  
406 in subdivision 1 of this subsection as appropriate by modification or reissuance of this  
407 general permit.

408 ~~3. The registration list shall contain individual dates for compliance with wasteload~~  
409 ~~allocations for dischargers, as follows:~~

410 ~~a. Owners of facilities listed in 9VAC25-820-80 B will have individual dates for~~  
411 ~~compliance based on their respective compliance plans that may be earlier than the~~  
412 ~~schedule listed in subdivision 1 of this subsection.~~

413 ~~b. Owners of facilities listed in 9VAC25-820-80 B that waive their compliance~~  
414 ~~schedules in accordance with 9VAC25-820-40 A 2 b shall have an individual~~  
415 ~~compliance date of January 1, 2023.~~

416 ~~c. Upon completion of the projects contained in their compliance plans, owners of~~  
417 ~~facilities listed in 9VAC25-820-80 B may receive a revised individual compliance date~~  
418 ~~of January 1 for the calendar year immediately following the year in which a~~  
419 ~~Certificate to Operate was issued for the capital projects, but not later than January~~  
420 ~~1, 2026.~~

421 ~~d. Owners of new and expanded facilities will have individual dates for compliance~~  
 422 ~~corresponding to the date that coverage under this general permit was extended to~~  
 423 ~~discharges from the facility.~~

424 D. Annual update of compliance plan. Every owner of a facility required to submit a  
 425 registration statement shall either individually or through the Virginia Nutrient Credit Exchange  
 426 Association submit updated compliance plans to the department no later than February 1 of  
 427 each year. The compliance plans shall contain sufficient information to document a plan to  
 428 achieve and maintain compliance with applicable total nitrogen and total phosphorus individual  
 429 wasteload allocations on the registration list and aggregate wasteload allocations in Part I C 3.  
 430 Compliance plans for owners of facilities that were required to submit a registration statement  
 431 with the department under Part I G 1 a may rely on the acquisition of point source credits in  
 432 accordance with Part I J of this general permit to achieve compliance with the individual and  
 433 combined wasteload allocations in each tributary. Annual compliance plan updates for facilities  
 434 subject to reduced wasteload allocations and listed in 9VAC25-820-80 shall not rely on the  
 435 acquisition of credits through payments into the Nutrient Offset Fund. Compliance plans for  
 436 expansions or new discharges for owners of facilities that are required to submit a registration  
 437 statement with the department under Part I G 1 b and c may rely on the acquisition of allocation  
 438 in accordance with Part II B of this general permit to achieve compliance with the individual and  
 439 combined wasteload allocations in each tributary.

440 E. Monitoring requirements.

441 1. Discharges shall be monitored by the permittee during weekdays as specified in the  
 442 table below unless the department determines that weekday only sampling results in a  
 443 non-representative load. Weekend monitoring or alternative monthly load calculations to  
 444 address production schedules or seasonal flows shall be submitted to the department for  
 445 review and approval on a case-by-case basis. Facilities that exhibit instantaneous  
 446 discharge flows that vary from the daily average discharge flow by less than 10% may  
 447 submit a proposal to the department to use an alternative sample type; such proposals  
 448 shall be reviewed and approved by the department on a case-by-case basis.

Parameter	Sample Type and Collection Frequency					
STP design flow	$\geq 20.0$ <u>less than</u> <u>0.040 MGD</u>	<del>1.0 - 19.999</del> <u>0.040-0.499</u> MGD	<del>0.5-0.999</del> <u>0.5-0.999</u> MGD	<del>0.5 - 0.999</del> <u>1.0-4.99</u> MGD	<del>0.040 - 0.499</del> <u>5.0-19.999</u> MGD	<del>&lt; 0.040</del> <u>greater than</u> <u>or equal to</u> <u>20.0 MGD</u>
Effluent TN load limit for industrial facilities	<u>less than</u> <u>487 lb/yr</u>	$\geq 100,000$ <u>487 - 49,999</u> lb/yr	<u>50,000-</u> <u>99,999</u> lb/yr	<del>50,000 - 99,999</del> <u>100,000-</u> <u>349,999</u> lb/yr	<del>487 - 49,999</del> <u>greater than</u> <u>350,000</u> lb/yr	< 487 lb/yr
Effluent TP load limit for industrial facilities	<u>less than 37</u> <u>lb/yr</u>	$\geq 10,000$ <u>37-4,999</u> lb/yr	<u>5,000-</u> <u>9,999 lb/yr</u>	<del>5,000 - 9,999</del> <u>10,000-</u> <u>34,999 lb/yr</u>	<del>37 - 4,999</del> <u>greater than</u> <u>35,000 lb/yr</u>	< 37 lb/yr

Flow		Totalizing, Indicating, and Recording					1/Day, see individual VPDES permit for sample type
<u>Flow</u>	<u>1/Day, see individual VPDES permit for sample types</u>	<u>Totalizing, Indicating, and Recording</u>					
Nitrogen Compounds (Total Nitrogen = TKN + NO <sub>2</sub> <sup>-</sup> (as N) + NO <sub>3</sub> <sup>-</sup> (as N))	24 HC 3 Days/Week <u>1/Month Grab</u>	24 HC 2 Days/Week* 8 HC <u>2/Month, greater than 7 days apart</u>	8 HC 1 <u>Day/Week</u>	8 HC 2 Days/Week <u>24 HC</u> 1 <u>Day/Week</u>	8 HC <u>2/Month, &gt; 7 days apart</u> <u>24 HC</u> 2 <u>Days/Week*</u>	1/Month Grab <u>24 HC</u> 3 <u>Days/Week</u>	
Total Phosphorus	24 HC 3 Days/Week <u>1/Month Grab</u>	24 HC 2 Days/Week* 8 HC <u>2/Month, greater than 7 days apart</u>	8 HC 1 <u>Day/Week</u>	8 HC 2 Days/Week <u>24 HC</u> 1 <u>Day/Week</u>	8 HC <u>2/Month, &gt; 7 days apart</u> <u>24 HC</u> 2 <u>Days/Week*</u>	1/Month Grab <u>24 HC</u> 3 <u>Days/Week</u>	
<p>*Two flow composited samples taken in the same calendar week that are then composited by flow into a single weekly composite sample for analysis shall be considered to be in compliance with this requirement.</p> <p>[ HC = hour composite ]</p>							

- 449 2. Monitoring for compliance with effluent limitations shall be performed in a manner  
450 identical to that used to determine compliance with effluent limitations established in the  
451 individual VPDES permit unless specified otherwise in subdivisions 3, 4, and 5 of Part I  
452 E. Monitoring or sampling shall be conducted according to analytical laboratory methods  
453 approved under 40 CFR Part 136, unless other test or sample collection procedures  
454 have been requested by the permittee and approved by the department in writing. All  
455 analysis for compliance with effluent limitations shall be conducted in accordance with  
456 1VAC30-45, Certification for Noncommercial Environmental Laboratories, or 1VAC30-  
457 46, Accreditation for Commercial Environmental Laboratories. Monitoring may be  
458 performed by the permittee at frequencies more stringent than listed in subdivision 1 of  
459 Part I E; however, the permittee shall report all results of such monitoring.
- 460 3. Loading values greater than or equal to 10 pounds reported in accordance with Part I  
461 E and F of this general permit shall be calculated and reported to the nearest pound  
462 without regard to mathematical rules of precision. Loading values of less than 10 pounds  
463 reported in accordance with Part I E and F of this general permit shall be calculated and

464 reported to at least two significant digits with the exception that all complete calendar  
465 year annual loads shall be reported to the nearest pound.

466 4. Data shall be reported on a form provided by the department, by the same date each  
467 month as is required by the owner's individual VPDES permit. The total monthly load  
468 shall be calculated in accordance with the following formula:

$$ML = \left( \frac{\sum DL}{s} \right) \times d$$

469  
470 where:

471 ML = total monthly load (lb/mo) = average daily load for the calendar month  
472 multiplied by the number of days of the calendar month on which a discharge  
473 occurred

474 DL = daily load = daily concentration (expressed as mg/l to the nearest 0.01 mg/l)  
475 multiplied by the flow volume of effluent discharged during the 24-hour period  
476 (expressed as MGD to at least the nearest 0.01 MGD and in no case less than two  
477 significant digits), multiplied by 8.345. Daily loads greater than or equal to 10 pounds  
478 may be rounded to the nearest whole number to convert to pounds per day (lbs/day).  
479 Daily loads less than or equal to 10 pounds may be rounded to no fewer than two  
480 significant figures.

481 s = number of days in the calendar month in which a sample was collected and  
482 analyzed

483 d = number of discharge days in the calendar month

484 For total phosphorus, all daily concentration data below the quantification level (QL) for  
485 the analytical method used shall be treated as half the QL (without rounding). All daily  
486 concentration data equal to or above the QL for the analytical method used shall be  
487 treated as it is reported. If all data are below the QL, then the average shall be reported  
488 as half the QL.

489 For total nitrogen (TN), if none of the daily concentration data for the respective species  
490 (i.e., TKN, nitrates/nitrites) are equal to or above the QL for the respective analytical  
491 methods used, the daily TN concentration value reported shall equal one half of the  
492 largest QL (without rounding) used for the respective species. If one of the data is equal  
493 to or above the QL, the daily TN concentration value shall be treated as that data point  
494 as reported. If more than one of the data is above the QL, the daily TN concentration  
495 value shall equal the sum of the data points as reported.

496 The quantification levels shall be less than or equal to the following concentrations:

Parameter	Quantification Level
TKN	0.50 mg/l
Nitrite	0.10 mg/l
Nitrate	0.20 mg/l
Nitrite + Nitrate	0.20 mg/l

497 Higher QLs may be approved on a case-by-case basis where a higher QL routinely  
498 results in reportable results of the species in question or is otherwise technically  
499 appropriate based on standard lab practices.

500 The total year-to-date mass load shall be calculated in accordance with the following  
501 formula:

502  $AL_{YTD} = \sum_{(Jan-present)} ML$

503 where:

504 AL-YTD = calendar year-to-date annual load (lb/yr)

505 ML = total monthly load (lb/mo)

506 The total annual mass load shall be calculated in accordance with the following formula:

507  $AL = \sum_{(Jan-Dec)} ML$

508 where:

509 AL = calendar year annual load (lb/yr)

510 ML = total monthly load (lb/mo)

511 5. The department may authorize a chemical usage evaluation as an alternative means  
512 of determining nutrient loading for outfalls where the only source of nutrients is that  
513 found in the surface water intake and chemical additives used by the facility. Such an  
514 evaluation shall be submitted to the department for review and approval on a case-by-  
515 case basis. Implementation of approved chemical usage evaluations shall satisfy the  
516 requirements specified under Part I E 1 and 2.

517 6. Monthly average concentration data reporting. For total phosphorus, TKN, and nitrite  
518 + nitrate monthly average concentration values. All concentration data below the QL  
519 used for the analysis shall be treated as one-half of the QL (without rounding). All  
520 concentration data equal to or above the QL used for the analysis shall be treated as it is  
521 reported to the nearest 0.01 mg/L. An arithmetic average shall be calculated using all  
522 reported data for the month. This arithmetic average shall be reported on the Discharge  
523 Monitoring Report (DMR) as calculated to the nearest 0.01 mg/L.

524 For nitrite + nitrate if tested separately, add the daily total nitrite and nitrate  
525 concentrations to obtain the daily nitrite + nitrate values. If none of the daily  
526 concentrations data for the respective species tested separately (nitrites, nitrates) are  
527 equal to or above the QL for the respective analytical methods used, the daily nitrite +  
528 nitrate concentration value shall equal one-half of the largest QL (without rounding) used  
529 for the respective species. If one of the data is equal or above the QL, the daily nitrite +  
530 nitrate concentration value shall be treated as that data point as reported. If more than  
531 one of the data is above the QL, the daily nitrite + nitrate concentration value shall equal  
532 the sum of the data points as reported. An arithmetic average shall be calculated using  
533 all reported data for the month. This arithmetic average shall be reported on the DMR as  
534 calculated to the nearest 0.01 mg/L.

535 F. Annual reporting. On or before February 1, annually, each permittee shall file a discharge  
536 monitoring report with the department identifying the annual mass load of total nitrogen and the  
537 annual mass load of total phosphorus discharged by the permitted facility during the previous  
538 calendar year.

539 G. Requirement to register; exclusions.

540 1. The following owners are required to register for coverage under this general permit:

541 a. Every owner of an existing facility authorized by a VPDES permit to discharge  
542 100,000 gallons or more per day from a sewage treatment work, or an equivalent  
543 load from an industrial facility, directly into tidal waters, or 500,000 gallons or more  
544 per day from a sewage treatment works, or an equivalent load from an industrial  
545 facility, directly into nontidal waters shall submit a registration statement to the  
546 department by November 1, 2046 [ 2026 2031 ], and thereafter upon the reissuance

547 of this general permit in accordance with Part III M. The conditions of this general  
548 permit will apply to such owner upon approval of a registration statement.

549 b. Any owner of a facility authorized by a ~~Virginia Pollutant Discharge Elimination~~  
550 ~~System~~ VPDES permit to discharge 40,000 gallons or more per day from a sewage  
551 treatment works, or an equivalent load from an industrial facility, directly into tidal or  
552 nontidal waters shall submit a registration statement with the department at the time  
553 ~~he makes~~ the owner submits an application for an individual permit with the  
554 department for a new discharge or expansion that is subject to an offset requirement  
555 in Part II of this general permit or to a technology-based requirement in 9VAC25-40-  
556 70, and thereafter upon the reissuance of this general permit in accordance with Part  
557 III M. The conditions of this general permit will apply to such owner beginning  
558 January 1 of the calendar year immediately following approval of a registration  
559 statement and issuance or modification of the individual permit.

560 c. Any owner of a facility treating domestic sewage authorized by a VPDES permit  
561 with a discharge greater than 1,000 gallons per day up to and including 39,999  
562 gallons per day that did not commence the discharge of pollutants prior to January 1,  
563 2011, and is subject to offset requirements in accordance with Part II A 1 c of this  
564 general permit shall submit a registration statement with the department at the time  
565 the owner makes application for an individual permit with the department or prior to  
566 commencing a discharge, whichever occurs first, and thereafter upon the reissuance  
567 of this general permit in accordance with Part III M.

568 2. All other categories of discharges are excluded from registration under this general  
569 permit.

570 H. Registration statement.

571 1. The registration statement shall contain the following information:

572 a. Name, mailing address, ~~and~~ telephone number, and email address, ~~and fax~~  
573 ~~number~~ of the owner (and facility operator, if different from the owner) applying for  
574 permit coverage;

575 b. Name (or other identifier), address, city or county, contact name, phone number,  
576 and email address, ~~and fax number~~ for the facility for which the registration  
577 statement is submitted;

578 c. VPDES permit numbers for all permits assigned to the facility, or pursuant to which  
579 the discharge is authorized;

580 d. If applying for an aggregated wasteload allocation in accordance with Part I B 2 of  
581 this permit, a list of all affected facilities and the VPDES permit numbers assigned to  
582 these facilities;

583 e. For new and expanded facilities, a plan to offset new or increased delivered total  
584 nitrogen and delivered total phosphorus loads, including the amount of wasteload  
585 allocation acquired. Wasteload allocations or credits sufficient to offset projected  
586 nutrient loads must be provided for period of at least five years; and

587 f. For existing facilities, the amount of a facility's wasteload allocation transferred to  
588 or from another facility to offset new or increased delivered total nitrogen and  
589 delivered total phosphorus loads from a new discharge or expansion.

590 2. The registration statement shall be submitted to the DEQ Central Office, Office of  
591 VPDES Permits. Following notification from the department of the start date for the  
592 required electronic submission of Notices of Intent to Discharge forms (i.e., registration  
593 statements), as provided for in 9VAC25-31-1020, such form submitted after that date  
594 shall be electronically submitted to the department in compliance with this section and

595 9VAC25-31-1020. At least three months' notice shall be provided between the  
596 notification from the department and the date after which such forms must be submitted  
597 electronically.

598 3. An amended registration statement shall be submitted to DEQ immediately upon the  
599 acquisition or transfer of a facility's wasteload allocation to offset new or increased  
600 delivered total nitrogen and delivered total phosphorus loads from a new discharge or  
601 expansion.

602 I. Public notice for registration statements proposing modifications or incorporations of new  
603 wasteload allocations or delivery factors.

604 1. All public notices issued pursuant to a proposed modification or incorporation of a (i)  
605 new wasteload allocation to offset new or increased delivered total nitrogen and  
606 delivered total phosphorus loads from a new discharge or expansion or (ii) delivery  
607 factor shall be published once a week for two consecutive weeks in a local newspaper of  
608 general circulation serving the locality where the facility is located informing the public  
609 that the owner of the facility intends to apply for coverage under this general permit. At a  
610 minimum, the notice shall include:

611 a. A statement of the owner's intent to register for coverage under this general  
612 permit;

613 b. A brief description of the facility and its location;

614 c. The amount of wasteload allocation that will be acquired or transferred if  
615 applicable;

616 d. The delivery factor for a new discharge or expansion;

617 e. If applicable, any proposed nonpoint source to point source trading ratio less than  
618 2:1 proposed under Part II B 1 b (1);

619 f. A statement that the purpose of the public participation is to acquaint the public  
620 with the technical aspects of the facility and how the standards and the requirements  
621 of this chapter will be met, to identify issues of concern, to facilitate communication,  
622 and to establish a dialogue between the owner and persons who may be affected by  
623 the discharge from the facility;

624 g. An announcement of a 30-day comment period and the name, telephone number,  
625 and address of the owner's representative who can be contacted by the interested  
626 persons to answer questions;

627 h. The name, telephone number, and address of the DEQ representative who can be  
628 contacted by the interested persons to answer questions, or where comments shall  
629 be sent; and

630 i. The location where copies of the documentation to be submitted to the department  
631 in support of this general permit notification and any supporting documents can be  
632 viewed and copied.

633 2. The owner shall place a copy of the documentation and support documents in a  
634 location accessible to the public in the vicinity of the proposed facility.

635 3. The public shall be provided 30 days to comment on the technical and the regulatory  
636 aspects of the proposal. The comment period will begin on the date the notice is  
637 published in the local newspaper.

638 J. Compliance with wasteload allocations.

639 1. Methods of compliance. The owner of the permitted facility shall comply with its  
640 wasteload allocation contained in the registration list maintained by the department. The  
641 owner of the permitted facility shall be in compliance with its wasteload allocation if:

- 642 a. The annual mass load is less than or equal to the applicable wasteload allocation  
643 assigned to the facility in this general permit (or permitted design capacity for  
644 expanded facilities without allocations);
- 645 b. The owner of the permitted facility acquires sufficient point source nitrogen or  
646 phosphorus credits in accordance with subdivision 2 of this subsection; provided,  
647 however, that the acquisition of nitrogen or phosphorus credits pursuant to this  
648 section shall not alter or otherwise affect the individual wasteload allocations for each  
649 permitted facility; or
- 650 c. In the event he is unable to meet the individual wasteload allocation pursuant to  
651 subdivision 1 a or 1 b of this subsection, the owner of the permitted facility acquires  
652 sufficient nitrogen or phosphorus credits through payments made into the Nutrient  
653 Offset Fund pursuant to subdivision 3 of this subsection; provided, however, that the  
654 acquisition of nitrogen or phosphorus credits pursuant to this section shall not alter or  
655 otherwise affect the individual wasteload allocations for each permitted facility.
- 656 2. Credit acquisition from owners of permitted facilities. A permittee may acquire point  
657 source nitrogen credits or point source phosphorus credits from one or more owners of  
658 permitted facilities only if:
- 659 a. The credits are generated and applied to a compliance obligation in the same  
660 calendar year;
- 661 b. The credits are generated by one or more permitted facilities in the same tributary,  
662 except that owners of permitted facilities in the Eastern Shore Basin may also  
663 acquire credits from owners of permitted facilities in the Potomac and Rappahannock  
664 tributaries. Owners of Eastern Shore Basin facilities may acquire credits from the  
665 owners of Potomac tributary facilities at a trading ratio of 1:1. A trading ratio of 1.3:1  
666 shall apply to the acquisition of credits from the owners of a Rappahannock tributary  
667 facility by the owner of an Eastern Shore Basin facility;
- 668 c. The exchange or acquisition of credits does not affect any requirement to comply  
669 with local water quality-based limitations as determined by the ~~board~~ department;
- 670 d. The credits are acquired no later than June 1 immediately following the calendar  
671 year in which the credits are applied;
- 672 e. The credits are generated by a facility that has been constructed, and has  
673 discharged from treatment works whose design flow or equivalent industrial activity is  
674 the basis for the facility's wasteload allocations (until a facility is constructed and has  
675 commenced operation, such credits are held, and may be sold, by the Nutrient Offset  
676 Fund; and
- 677 f. No later than June 1 immediately following the calendar year in which the credits  
678 are applied, the permittee certifies on a credit exchange notification form supplied by  
679 the department that he has acquired sufficient credits to satisfy his compliance  
680 obligations. The permittee shall comply with the terms and conditions contained in  
681 the credit exchange notification form submitted to the department.
- 682 3. Credit acquisitions from the Nutrient Offset Fund. Until such time as the ~~board~~  
683 department finds that no allocations are reasonably available in an individual tributary,  
684 permittees that cannot meet their total nitrogen or total phosphorus effluent limit may  
685 acquire nitrogen or phosphorus credits through payments made into the Nutrient Offset  
686 Fund established in § 10.1-2128.2 of the Code of Virginia only if, no later than June 1  
687 immediately following the calendar year in which the credits are to be applied, the  
688 permittee certifies on a form supplied by the department that he has diligently sought,  
689 but has been unable to acquire, sufficient credits to satisfy his compliance obligations

690 through the acquisition of point source nitrogen or phosphorus credits with other  
691 permitted facilities, and that he has acquired sufficient credits to satisfy his compliance  
692 obligations through one or more payments made in accordance with the terms of this  
693 general permit. Such certification may include providing a record of solicitation or  
694 demonstration that point source allocations are not available for sale in the tributary in  
695 which the permittee's facility is located. Payments to the Nutrient Offset Fund shall be in  
696 the amount of ~~\$5.08~~ \$9.23 for each pound of nitrogen and ~~\$11.15~~ \$20.26 for each pound  
697 of phosphorus and shall be subject to the following requirements:

698 a. The credits are generated and applied to a compliance obligation in the same  
699 calendar year.

700 b. The credits are generated in the same tributary, except that owners of permitted  
701 facilities in the Eastern Shore Basin may also acquire credits from the owners of  
702 facilities that discharge to the Potomac and Rappahannock tributaries. Owners of  
703 Eastern Shore Basin facilities may acquire credits from the owners of facilities that  
704 discharge to a Potomac tributary at a trading ratio of 1:1. A trading ratio of 1.3:1 shall  
705 apply to the acquisition of credits from owners of facilities that discharge to a  
706 Rappahannock tributary by the owners of an Eastern Shore Basin facility.

707 c. The acquisition of credits does not affect any requirement to comply with local  
708 water quality-based limitations, as determined by the ~~board~~ department.

709 4. This general permit neither requires nor prohibits a municipality or regional sewerage  
710 authority's development and implementation of trading programs among industrial users,  
711 which are consistent with the pretreatment regulatory requirements at 40 CFR Part 403  
712 and the municipality's or authority's individual VPDES permit.

713 Part II

714 SPECIAL CONDITIONS APPLICABLE TO NEW AND EXPANDED FACILITIES

715 A. Offsetting mass loads discharged by new and expanded facilities.

716 1. An owner of a new or expanded facility shall comply with the applicable requirements  
717 of this section as a condition of the facility's coverage under this general permit.

718 a. An owner of a facility authorized by a VPDES permit first issued before July 1,  
719 2005, that expands the facility to discharge 40,000 gallons or more per day, or an  
720 equivalent load, shall demonstrate to the department that he has acquired wasteload  
721 allocations sufficient to offset any increase in his delivered total nitrogen and  
722 delivered total phosphorus loads resulting from any expansion beyond his permitted  
723 capacity as of July 1, 2005.

724 b. An owner of a facility authorized by a VPDES permit first issued on or after July 1,  
725 2005, to discharge 40,000 gallons or more per day, or an equivalent load, shall  
726 demonstrate to the department that he has acquired wasteload allocations sufficient  
727 to offset his delivered total nitrogen and delivered total phosphorus loads.

728 c. An owner of a facility treating domestic sewage authorized by a VPDES permit  
729 with a discharge greater than 1,000 gallons per day up to and including 39,999  
730 gallons per day that did not commence the discharge of pollutants prior to January 1,  
731 2011, shall demonstrate to the department that he has acquired wasteload  
732 allocations sufficient to offset his delivered total nitrogen and delivered phosphorus  
733 loads prior to commencing the discharge, except when the facility is for short-term  
734 temporary use only as determined by the department or when treatment of domestic  
735 sewage is not the primary purpose of the facility.

736 2. Offset calculations shall address the proposed discharge that exceeds:

737 a. The applicable wasteload allocation assigned to discharges from the facility in this  
738 general permit, for expanding significant dischargers with a wasteload allocation  
739 listed in 9VAC25-720-50 C, 9VAC25-720-60 C, 9VAC25-720-70 C, 9VAC25-720-110  
740 C, and 9VAC25-720-120 C of the Water Quality Management Planning Regulation;  
741 b. The permitted design capacity, for all other expanding dischargers; and  
742 c. Zero, for facilities with a new discharge.

743 3. An owner of multiple facilities that discharge into the same tributary, and assigned an  
744 aggregate mass load limit in accordance with Part I B 2 of this general permit, that  
745 undertakes construction of new or expanded facilities shall be required to acquire  
746 wasteload allocations sufficient to offset any increase in delivered total nitrogen and  
747 delivered total phosphorus loads resulting from any expansion beyond the aggregate  
748 mass load limit assigned these facilities.

749 B. Acquisition of wasteload allocations [ or annual point source credits ] . Wasteload  
750 allocations [ or annual point source credits ] required by this section to offset new or increased  
751 delivered total nitrogen and delivered total phosphorus loads shall be acquired in accordance  
752 with this section.

753 1. Such allocations [ or annual point source credits ] may be acquired from one or a  
754 combination of the following:

755 a. Acquisition of all or a portion of the wasteload allocations or point source nitrogen  
756 or point source phosphorus credits from the owners of one or more permitted  
757 facilities, either directly from the owner or, in the case of point source credits, through  
758 the Virginia Nutrient Credit Exchange Association based on delivered pounds by the  
759 respective trading parties as listed by the department;

760 b. Acquisition of credits certified by the ~~board~~ department pursuant to § 62.1-  
761 44.19:20 of the Code of Virginia. Credits used to offset new or increased nutrient  
762 loads under this subdivision shall be:

763 (1) Subject to a trading ratio of two pounds reduced for every pound to be discharged  
764 if certified as a nonpoint source credit by the ~~board~~ department pursuant to § 62.1-  
765 44.19:20 of the Code of Virginia. On a case-by-case basis the ~~board~~ department may  
766 approve nonpoint source to source trading ratios of less than 2:1 (but not less than  
767 1:1) when the applicant demonstrates factors that ameliorate the presumed 2:1  
768 uncertainty ratio for credits generation by nonpoint sources such as:

769 (a) When direct and representative monitoring of the pollutant loadings from a  
770 nonpoint source is performed in a manner and at a frequency similar to that  
771 performed at VPDES point sources and there is consistency in the effectiveness of  
772 the operation of the nonpoint source best management practice (BMP) approaching  
773 that of a conventional point source.

774 (b) When nonpoint source credits are generated from land conservation that ensures  
775 permanent protection through a conservation easement or other instrument attached  
776 to the deed and when load reductions can be reliably determined;

777 (2) Calculated using best management practices efficiency rates and attenuation  
778 rates, as established by the latest science and relevant technical information, and  
779 approved by the ~~board~~ department;

780 (3) Based on appropriate delivery factors, as established by the latest science and  
781 relevant technical information, and approved by the ~~board~~ department;

782 (4) Demonstrated to have achieved reductions beyond those already required by or  
783 funded under federal or state law, or by Virginia's Chesapeake Bay TMDL  
784 Watershed Implementation Plan;

785 (5) Generated in accordance with conditions of the facility's individual VPDES permit;  
786 and

787 (6) In the case of credits generated by land use conversions and urban source  
788 reduction controls (BMPs), the credits shall represent nutrient reductions beyond  
789 those in place as of July 1, 2005;

790 c. Until such time as the ~~board~~ department finds that no allocations are reasonably  
791 available in an individual tributary, acquisition of allocations through payments made  
792 into the Nutrient Offset Fund established in § 10.1-2128.2 of the Code of Virginia; or

793 d. Acquisition of allocations through such other means as may be approved by the  
794 department on a case-by-case basis. This includes allocations granted by the ~~board~~  
795 department to an owner of a facility that is authorized by a VPA permit to land apply  
796 domestic sewage if:

797 (1) The VPA permit was issued before July 1, 2005;

798 (2) The allocation does not exceed the facility's permitted design capacity as of July  
799 1, 2005;

800 (3) The waste treated by the facility that is covered under the VPA permit will be  
801 treated and discharged pursuant to a VPDES permit for a new discharge; and

802 (4) The owner installs state-of-the-art nutrient removal technology at such a facility.

803 2. Acquisition of allocations or point source nitrogen or point source phosphorus credits  
804 is subject to the following conditions:

805 a. The allocations or credits shall be generated and applied to an offset obligation in  
806 the same calendar year in which the credit is generated;

807 b. The allocations or credits shall be generated in the same tributary;

808 c. Such acquisition does not affect any requirement to comply with local water  
809 quality-based limitations, as determined by the ~~board~~ department;

810 d. The allocations are authenticated (i.e., verified to have been generated) by the  
811 permittee as required by the facility's individual VPDES permit, utilizing procedures  
812 approved by the ~~board~~ department, no later than February 1 immediately following  
813 the calendar year in which the allocations are applied; and

814 e. If obtained from the owner of a permitted point source, the allocations shall be  
815 generated by a facility that has been constructed, and has discharged from treatment  
816 works whose design flow or equivalent industrial activity is the basis for the facility's  
817 wasteload allocations.

818 f. Such allocations or credits shall be secured for a period of five years with each  
819 registration under the general permit.

820 3. Priority of options. The ~~board~~ department shall give priority to allocations or credits  
821 acquired in accordance with subdivisions 1 a, b, and d of this subsection. The ~~board~~  
822 department shall approve allocations acquired in accordance with subdivision 1 c of this  
823 subsection only after the owner has demonstrated that he has made a good faith effort  
824 to acquire sufficient allocations in accordance with subdivisions 1 a and 1 b of this  
825 subsection, and that such allocations are not reasonably available taking into account  
826 timing, cost and other relevant factors. Such demonstration may include providing a  
827 record of solicitation, or other demonstration that point source allocations or nonpoint  
828 source allocations are not available for sale in the tributary in which the permittee's  
829 facility discharge is located.

830 4. Annual allocation acquisitions from the Nutrient Offset Fund. The cost for each pound  
831 of nitrogen and each pound of phosphorus shall be determined at the time payment is

832 made to the Nutrient Offset Fund, based on the higher of (i) the estimated cost of  
833 achieving a reduction of one pound of nitrogen or phosphorus at the facility that is  
834 securing the allocation, or comparable facility, for each pound of allocation acquired; or  
835 (ii) the average cost, as determined by the department on an annual basis, of reducing  
836 two pounds of nitrogen or phosphorus from nonpoint sources in the same tributary for  
837 each pound of allocation acquired.

838 Part III

839 CONDITIONS APPLICABLE TO ALL VPDES PERMITS

840 A. Monitoring.

- 841 1. Samples and measurements taken as required by this permit shall be representative  
842 of the monitored activity.
- 843 2. Monitoring shall be conducted according to procedures approved under 40 CFR Part  
844 136 or alternative methods approved by the U.S. Environmental Protection Agency,  
845 unless other procedures have been specified in this permit.
- 846 3. The permittee shall periodically calibrate and perform maintenance procedures on all  
847 monitoring and analytical instrumentation at intervals that will ensure accuracy of  
848 measurements.
- 849 4. Samples taken as required by this permit shall be analyzed in accordance with  
850 1VAC30-45 (Certification for Noncommercial Environmental Laboratories) or 1VAC30-46  
851 (Accreditation for Commercial Environmental Laboratories).

852 B. Records.

- 853 1. Records of monitoring information shall include:
- 854 a. The date, exact place, and time of sampling or measurements;
  - 855 b. The individuals who performed the sampling or measurements;
  - 856 c. The dates and times analyses were performed;
  - 857 d. The individuals who performed the analyses;
  - 858 e. The analytical techniques or methods used; and
  - 859 f. The results of such analyses.
- 860 2. Except for records of monitoring information required by this permit related to the  
861 permittee's sewage sludge use and disposal activities, which shall be retained for a  
862 period of at least five years, the permittee shall retain records of all monitoring  
863 information, including all calibration and maintenance records and all original strip chart  
864 recordings for continuous monitoring instrumentation, copies of all reports required by  
865 this permit, and records of all data used to complete the registration statement for this  
866 permit, for a period of at least three years from the date of the sample, measurement,  
867 report, or request for coverage. This period of retention shall be extended automatically  
868 during the course of any unresolved litigation regarding the regulated activity or  
869 regarding control standards applicable to the permittee or as requested by the ~~board~~  
870 department.

871 C. Reporting monitoring results.

- 872 1. The permittee shall submit the results of the monitoring required by this permit not  
873 later than the 10th day of the month after monitoring takes place, unless another  
874 reporting schedule is specified elsewhere in this permit. Monitoring results shall be  
875 submitted to the department's regional office.
- 876 2. Monitoring results shall be reported on a Discharge Monitoring Report (DMR) or on  
877 forms provided, approved, or specified by the department.

878 3. If the permittee monitors any pollutant specifically addressed by this permit more  
879 frequently than required by this permit using test procedures approved under 40 CFR  
880 Part 136 or using other test procedures approved by the U.S. Environmental Protection  
881 Agency or using procedures specified in this permit, the results of this monitoring shall  
882 be included in the calculation and reporting of the data submitted on the DMR or  
883 reporting form specified by the department.

884 4. Calculations for all limitations that require averaging of measurements shall utilize an  
885 arithmetic mean unless otherwise specified in this permit.

886 D. Duty to provide information. The permittee shall furnish to the department, within a  
887 reasonable time, any information that the ~~board~~ department may request to determine whether  
888 cause exists for modifying, revoking and reissuing, or terminating coverage under this permit or  
889 to determine compliance with this permit. The ~~board~~ department may require the permittee to  
890 furnish, upon request, such plans, specifications, and other pertinent information as may be  
891 necessary to determine the effect of the wastes from the discharge on the quality of state waters  
892 or such other information as may be necessary to accomplish the purposes of the State Water  
893 Control Law. The permittee shall also furnish to the department, upon request, copies of records  
894 required to be kept by this permit.

895 E. Compliance schedule reports. Reports of compliance or noncompliance with, or any  
896 progress reports on, interim and final requirements contained in any compliance schedule of this  
897 permit shall be submitted no later than 14 days following each schedule date.

898 F. Unauthorized discharges. Except in compliance with this permit or another permit issued  
899 by the ~~board~~ department, it shall be unlawful for any person to:

900 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious  
901 or deleterious substances; or

902 2. Otherwise alter the physical, chemical, or biological properties of such state waters  
903 and make them detrimental to the public health, to animal or aquatic life, or to the use of  
904 such waters for domestic or industrial consumption, for recreation, or for other uses.

905 G. Reports of unauthorized discharges. Any permittee that discharges or causes or allows a  
906 discharge of sewage, industrial waste, other wastes, or any noxious or deleterious substance  
907 into or upon state waters in violation of Part III F, or that discharges or causes or allows a  
908 discharge that may reasonably be expected to enter state waters in violation of Part III F, shall  
909 notify the department of the discharge immediately upon discovery of the discharge, but in no  
910 case later than 24 hours after said discovery. A written report of the unauthorized discharge  
911 shall be submitted to the department within five days of discovery of the discharge. The written  
912 report shall contain:

913 1. A description of the nature and location of the discharge;

914 2. The cause of the discharge;

915 3. The date on which the discharge occurred;

916 4. The length of time that the discharge continued;

917 5. The volume of the discharge;

918 6. If the discharge is continuing, how long it is expected to continue;

919 7. If the discharge is continuing, what the expected total volume of the discharge will be;  
920 and

921 8. Any steps planned or taken to reduce, eliminate, and prevent a recurrence of the  
922 present discharge or any future discharge not authorized by this permit.

923 Discharges reportable to the department under the immediate reporting requirements of  
924 other regulations are exempted from this requirement.

925 H. Reports of unusual or extraordinary discharges. If any unusual or extraordinary discharge  
926 including a bypass or upset should occur from a treatment works and the discharge enters or  
927 could be expected to enter state waters, the permittee shall promptly notify, in no case later than  
928 24 hours, the department by telephone after the discovery of the discharge. This notification  
929 shall provide all available details of the incident, including any adverse effects on aquatic life  
930 and the known number of fish killed. The permittee shall reduce the report to writing and shall  
931 submit it to the department within five days of discovery of the discharge in accordance with  
932 Part III I 2. Unusual and extraordinary discharges include, but are not limited to, any discharge  
933 resulting from:

- 934 1. Unusual spillage of materials resulting directly or indirectly from processing  
935 operations;
- 936 2. Breakdown of processing or accessory equipment;
- 937 3. Failure or taking out of service some or all of the treatment works; and
- 938 4. Flooding or other acts of nature.

939 I. Reports of noncompliance. The permittee shall report any noncompliance that may  
940 adversely affect state waters or may endanger public health.

941 1. An oral or online report shall be provided within 24 hours from the time the permittee  
942 becomes aware of the circumstances. The following shall be included as information that  
943 shall be reported within 24 hours under this paragraph:

- 944 a. Any unanticipated bypass; and
  - 945 b. Any upset that causes a discharge to surface waters.
- 946 2. A written report shall be submitted within five days and shall contain:
- 947 a. A description of the noncompliance and its cause;
  - 948 b. The period of noncompliance, including exact dates and times, and if the  
949 noncompliance has not been corrected, the anticipated time it is expected to  
950 continue; and
  - 951 c. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the  
952 noncompliance.

953 The ~~board~~ department may waive the written report on a case-by-case basis for reports  
954 of noncompliance under Part III I if the oral or online report has been received within 24  
955 hours and no adverse impact on state waters has been reported.

956 3. The permittee shall report all instances of noncompliance not reported under Part III I  
957 1 or 2, in writing, at the time the next monitoring reports are submitted. The reports shall  
958 contain the information listed in Part III I 2.

959 NOTE: The immediate (within 24 hours) reports required in Part III G, H, and I ~~may~~ shall  
960 be made to the department's regional office. Reports may be made by telephone or  
961 online at <https://www.deq.virginia.gov/land-waste/pollution-response> (online reporting is  
962 preferred). For reports outside normal working hours, ~~a message may be left and this~~  
963 ~~shall fulfill the immediate reporting requirement~~ the online portal shall be used. For  
964 emergencies, call the Virginia Department of Emergency Management ~~maintains a 24-~~  
965 ~~hour telephone service~~ Operations Center (24 hours) at 804-750-8845.

966 4. When the permittee becomes aware that it failed to submit any relevant facts in a  
967 permit registration statement or submitted incorrect information in a permit registration  
968 statement or in any report to the department, the permittee shall promptly submit such  
969 facts or information.

970 J. Notice of planned changes.

971 1. The permittee shall give notice to the department as soon as possible of any planned  
972 physical alterations or additions to the permitted facility. Notice is required only when:

973 a. The permittee plans alteration or addition to any building, structure, facility, or  
974 installation from which there is or may be a discharge of pollutants, the construction  
975 of which commenced:

976 (1) After promulgation of standards of performance under § 306 of the Clean Water  
977 Act (33 USC § 1251 et seq.) that are applicable to such source; or

978 (2) After proposal of standards of performance in accordance with § 306 of the Clean  
979 Water Act that are applicable to such source, but only if the standards are  
980 promulgated in accordance with § 306 of the Clean Water Act within 120 days of  
981 their proposal;

982 b. The alteration or addition could significantly change the nature or increase the  
983 quantity of pollutants discharged. This notification applies to pollutants that are  
984 subject neither to effluent limitations nor to notification requirements specified  
985 elsewhere in this permit; or

986 c. The alteration or addition results in a significant change in the permittee's sludge  
987 use or of disposal practices, and such alteration, addition, or change may justify the  
988 application of permit conditions that are different from or absent in the existing  
989 permit, including notification of additional use or of disposal sites not reported during  
990 the permit application process or not reported pursuant to an approved land  
991 application plan.

992 2. The permittee shall give advance notice to the department of any planned changes in  
993 the permitted facility or activity that may result in noncompliance with permit  
994 requirements.

995 K. Signatory requirements.

996 1. Registration statement. All registration statements shall be signed as follows:

997 a. For a corporation: by a responsible corporate officer. For the purpose of this  
998 section, a responsible corporate officer means (i) a president, secretary, treasurer, or  
999 vice-president of the corporation in charge of a principal business function, or any  
1000 other person who performs similar policy-making or decision-making functions for the  
1001 corporation or (ii) the manager of one or more manufacturing, production, or  
1002 operating facilities, provided the manager is authorized to make management  
1003 decisions that govern the operation of the regulated facility including having the  
1004 explicit or implicit duty of making major capital investment recommendations and  
1005 initiating and directing other comprehensive measures to assure long-term  
1006 environmental compliance with environmental laws and regulations; the manager  
1007 can ensure that the necessary systems are established or other actions taken to  
1008 gather complete and accurate information for permit registration requirements; and  
1009 where authority to sign documents has been assigned or delegated to the manager  
1010 in accordance with corporate procedures;

1011 b. For a partnership or sole proprietorship: by a general partner or the proprietor,  
1012 respectively; or

1013 c. For a municipality, state, federal, or other public agency: by either a principal  
1014 executive officer or ranking elected official. For purposes of this section, a principal  
1015 executive officer of a public agency includes (i) the chief executive officer of the  
1016 agency or (ii) a senior executive officer having responsibility for the overall  
1017 operations of a principal geographic unit of the agency.

1018 2. Reports, etc. All reports required by permits and other information requested by the  
1019 ~~board~~ department shall be signed by a person described in Part III K 1 or by a duly  
1020 authorized representative of that person. A person is a duly authorized representative  
1021 only if:

- 1022 a. The authorization is made in writing by a person described in Part III K 1;  
1023 b. The authorization specifies either an individual or a position having responsibility  
1024 for the overall operation of the regulated facility or activity such as the position of  
1025 plant manager, operator of a well or a well field, superintendent, position of  
1026 equivalent responsibility, or an individual or position having overall responsibility for  
1027 environmental matters for the company. A duly authorized representative may thus  
1028 be either a named individual or any individual occupying a named position; and  
1029 c. The written authorization is submitted to the department.

1030 3. Changes to authorization. If an authorization under Part III K 2 is no longer accurate  
1031 because a different individual or position has responsibility for the overall operation of  
1032 the facility, a new authorization satisfying the requirements of Part III K 2 shall be  
1033 submitted to the department prior to or together with any reports, or information to be  
1034 signed by an authorized representative.

1035 4. Certification. Any person signing a document under Part III K 1 or 2 shall make the  
1036 following certification:

1037 "I certify under penalty of law that this document and all attachments were prepared  
1038 under my direction or supervision in accordance with a system designed to assure  
1039 that qualified personnel properly gather and evaluate the information submitted.  
1040 Based on my inquiry of the person or persons who manage the system, or those  
1041 persons directly responsible for gathering the information, the information submitted  
1042 is, to the best of my knowledge and belief, true, accurate, and complete. I am aware  
1043 that there are significant penalties for submitting false information, including the  
1044 possibility of fine and imprisonment for knowing violations."

1045 L. Duty to comply. The permittee shall comply with all conditions of this permit. Any permit  
1046 noncompliance constitutes a violation of the State Water Control Law and the Clean Water Act,  
1047 except that noncompliance with certain provisions of this permit may constitute a violation of the  
1048 State Water Control Law but not the Clean Water Act. Permit noncompliance is grounds for  
1049 enforcement action, permit coverage termination, or denial of a permit coverage renewal  
1050 application.

1051 The permittee shall comply with effluent standards or prohibitions established under §  
1052 307(a) of the Clean Water Act for toxic pollutants and with standards for sewage sludge use or  
1053 disposal established under § 405(d) of the Clean Water Act within the time provided in the  
1054 regulations that establish these standards or prohibitions or standards for sewage sludge use or  
1055 disposal, even if this permit has not yet been modified to incorporate the requirement.

1056 M. Duty to reapply. If the permittee wishes to continue an activity regulated by this permit  
1057 after the expiration date of this permit, the permittee shall submit a new registration statement at  
1058 least 60 days before the expiration date of the existing permit, unless permission for a later date  
1059 has been granted by the ~~board~~ department. The ~~board~~ department shall not grant permission for  
1060 registration statements to be submitted later than the expiration date of the existing permit.

1061 N. Effect of a permit. This permit does not convey any property rights in either real or  
1062 personal property or any exclusive privileges, nor does it authorize any injury to private property  
1063 or invasion of personal rights or any infringement of federal, state, or local law or regulations.

1064 O. State law. Nothing in this permit shall be construed to preclude the institution of any legal  
1065 action under, or relieve the permittee from any responsibilities, liabilities, or penalties

1066 established pursuant to, any other state law or regulation or under authority preserved by § 510  
1067 of the Clean Water Act. Except as provided in permit conditions on "bypassing" (Part III U) and  
1068 "upset" (Part III V), nothing in this permit shall be construed to relieve the permittee from civil  
1069 and criminal penalties for noncompliance.

1070 P. Oil and hazardous substance liability. Nothing in this permit shall be construed to  
1071 preclude the institution of any legal action or relieve the permittee from responsibilities,  
1072 liabilities, or penalties to which the permittee is or may be subject under §§ 62.1-44.34:14  
1073 through 62.1-44.34:23 of the State Water Control Law.

1074 Q. Proper operation and maintenance. The permittee shall at all times properly operate and  
1075 maintain all facilities and systems of treatment and control (and related appurtenances) that are  
1076 installed or used by the permittee to achieve compliance with the conditions of this permit.  
1077 Proper operation and maintenance also include effective plant performance, adequate funding,  
1078 adequate staffing, and adequate laboratory and process controls, including appropriate quality  
1079 assurance procedures. This provision requires the operation of back-up or auxiliary facilities or  
1080 similar systems that are installed by the permittee only when the operation is necessary to  
1081 achieve compliance with the conditions of this permit.

1082 R. Disposal of solids or sludges. Solids, sludges, or other pollutants removed in the course  
1083 of treatment or management of pollutants shall be disposed of in a manner so as to prevent any  
1084 pollutant from such materials from entering state waters.

1085 S. Duty to mitigate. The permittee shall take all reasonable steps to minimize or prevent any  
1086 discharge or sludge use or disposal in violation of this permit that has a reasonable likelihood of  
1087 adversely affecting human health or the environment.

1088 T. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in  
1089 an enforcement action that it would have been necessary to halt or reduce the permitted activity  
1090 in order to maintain compliance with the conditions of this permit.

1091 U. Bypass.

1092 1. "Bypass" means the intentional diversion of waste streams from any portion of a  
1093 treatment facility. The permittee may allow any bypass to occur that does not cause  
1094 effluent limitations to be exceeded, but only if it also is for essential maintenance to  
1095 ensure efficient operation. These bypasses are not subject to the provisions of Part III U  
1096 2 and 3.

1097 2. Notice.

1098 a. Anticipated bypass. If the permittee knows in advance of the need for a bypass,  
1099 prior notice shall be submitted, if possible, at least 10 days before the date of the  
1100 bypass.

1101 b. Unanticipated bypass. The permittee shall submit notice of an unanticipated  
1102 bypass as required in Part III I.

1103 3. Prohibition of bypass.

1104 a. Bypass is prohibited, and the ~~board~~ department may take enforcement action  
1105 against a permittee for bypass, unless:

1106 (1) Bypass was unavoidable to prevent loss of life, personal injury, or severe  
1107 property damage;

1108 (2) There were no feasible alternatives to the bypass, such as the use of auxiliary  
1109 treatment facilities, retention of untreated wastes, or maintenance during normal  
1110 periods of equipment downtime. This condition is not satisfied if adequate back-up  
1111 equipment should have been installed in the exercise of reasonable engineering

1112 judgment to prevent a bypass that occurred during normal periods of equipment  
1113 downtime or preventive maintenance; and

1114 (3) The permittee submitted notices as required under Part III U 2.

1115 b. The ~~board~~ department may approve an anticipated bypass after considering its  
1116 adverse effects of the anticipated bypass if the ~~board~~ department determines that it  
1117 will meet the three conditions listed in Part III U 3 a.

1118 V. Upset.

1119 1. An upset, defined in 9VAC25-31-10, constitutes an affirmative defense to an action  
1120 brought for noncompliance with technology-based permit effluent limitations if the  
1121 requirements of Part III V 2 are met. A determination made during administrative review  
1122 of claims that noncompliance was caused by upset, and before an action for  
1123 noncompliance, is not a final administrative action subject to judicial review.

1124 2. A permittee who wishes to establish the affirmative defense of upset shall  
1125 demonstrate through properly signed, contemporaneous operating logs, or other  
1126 relevant evidence that:

1127 a. An upset occurred and that the permittee can identify the cause or causes of the  
1128 upset;

1129 b. The permitted facility was at the time being properly operated;

1130 c. The permittee submitted notice of the upset as required in Part III I; and

1131 d. The permittee complied with remedial measures required under Part III S.

1132 3. In any enforcement proceeding the permittee seeking to establish the occurrence of  
1133 an upset has the burden of proof.

1134 W. Inspection and entry. The permittee shall allow the director, or an authorized  
1135 representative (including an authorized contractor acting as a representative of the  
1136 administrator) upon presentation of credentials and other documents as may be required by law,  
1137 to:

1138 1. Enter upon the permittee's premises where a regulated facility or activity is located or  
1139 conducted, or where records must be kept under the conditions of this permit;

1140 2. Have access to and copy, at reasonable times, any records that must be kept under  
1141 the conditions of this permit;

1142 3. Inspect at reasonable times facilities, equipment (including monitoring and control  
1143 equipment), practices, or operations regulated or required under this permit; and

1144 4. Sample or monitor at reasonable times, for the purposes of assuring permit  
1145 compliance or as otherwise authorized by the Clean Water Act and the State Water  
1146 Control Law, substances or parameters at any location.

1147 For purposes of this section, the time for inspection shall be deemed reasonable during  
1148 regular business hours or whenever the facility is discharging. Nothing contained herein shall  
1149 make an inspection unreasonable during an emergency.

1150 X. Permit actions. Permits may be modified, revoked and reissued, or terminated for cause.  
1151 The filing of a request by the permittee for a permit modification, revocation and reissuance,  
1152 termination, or notification of planned changes or anticipated noncompliance does not stay any  
1153 permit condition.

1154 Y. Transfer of permit coverage. Permit coverage is not transferable to any person except  
1155 after notice to the department. Coverage under this permit may be automatically transferred to a  
1156 new permittee if:

1157 1. The current permittee notifies the department within 30 days of the transfer of the title  
 1158 to the facility or property, unless permission for a later date has been granted by the  
 1159 board department;

1160 2. The notice includes a written agreement between the existing and new permittees  
 1161 containing a specific date for transfer of permit responsibility, coverage, and liability  
 1162 between them; and

1163 3. The board department does not notify the existing permittee and the proposed new  
 1164 permittee of its intent to deny the new permittee coverage under the permit. If this notice  
 1165 is not received, the transfer is effective on the date specified in the agreement described  
 1166 in Part III Y 2.

1167 Z. Severability. The provisions of this permit are severable, and if any provision of this permit  
 1168 or the application of any provision of this permit to any circumstance is held invalid, the  
 1169 application of such provision to other circumstances, and the remainder of this permit, shall not  
 1170 be affected thereby.

1171 **9VAC25-820-80. Facilities subject to reduced individual total nitrogen and total**  
 1172 **phosphorus wasteload allocations.**

1173 A. Enhanced Nutrient Removal Certainty Program facilities

Facility	VPDES No.
HRSD - York River STP	VA0081314
HRSD - Boat Harbor STP	VA0081256
HRSD - James River STP	VA0081272
HRSD - Williamsburg STP	VA0081302
HRSD - Nansemond STP	VA0081299
HRSD - Army Base STP	VA0081230
HRSD - VIP WWTP	VA0081281

1174 B. Chlorophyll-a based total phosphorus wasteload allocations.

Facility	VPDES No.
Richmond WWTP	VA0063177
Falling Creek WWTP	VA0024996
Proctor's Creek WWTP	VA0060194
Henrico County WWTP	VA0063690
Phillip Morris - Park 500	VA0026557
Hopewell WWTP	VA0066630
South Central Wastewater Authority WWTP	VA0025437

1175

**FACT SHEET**  
**REISSUANCE OF A VPDES GENERAL PERMIT FOR NUTRIENT DISCHARGES AND**  
**NUTRIENT TRADING IN THE CHESAPEAKE BAY WATERSHED**

Effective Date of Permit January 1, 2027

The Virginia State Water Control Board (Board) has under consideration the reissuance of a Virginia Pollutant Discharge Elimination System (VPDES) general permit for nutrient discharges and nutrient trading in the Chesapeake Bay watershed.

Permit Number: VAN000000

Name of Permittee: Owners of new or existing facilities holding individual VPDES permits that discharge, or propose to discharge, total nitrogen or total phosphorus to the Chesapeake Bay or its tributaries. There are three categories of owners required to register for coverage under this general permit, which are described below.

Facility Location: Within the Chesapeake Bay Watershed of the Commonwealth of Virginia (except for the Washington, DC - Blue Plains WWTP, which is eligible to exchange nutrient credits under this permit). Localities within the Chesapeake Bay Watershed include all or portions of the Counties of Accomack, Albemarle, Alleghany, Amelia, Amherst, Appomattox, Arlington, Augusta, Bath, Bedford, Botetourt, Buckingham, Campbell, Caroline, Charles City, Chesterfield, Clarke, Craig, Culpeper, Cumberland, Dinwiddie, Essex, Fairfax, Fauquier, Fluvanna, Frederick, Giles, Gloucester, Goochland, Greene, Hanover, Henrico, Highland, Isle of Wight, James City, King and Queen, King William, Lancaster, Loudoun, Louisa, Madison, Mathews, Middlesex, Montgomery, Nelson, New Kent, Northampton, Northumberland, Nottoway, Orange, Page, Powhatan, Prince Edward, Prince George, Prince William, Rappahannock, Richmond, Roanoke, Rockbridge, Rockingham, Shenandoah, Spotsylvania, Stafford, Surry, Warren, Westmoreland, and York; and the Cities of Alexandria, Buena Vista, Charlottesville, Chesapeake, Colonial Heights, Covington, Fairfax, Falls Church, Fredericksburg, Hampton, Harrisonburg, Hopewell, Lexington, Lynchburg, Manassas, Manassas Park, Newport News, Norfolk, Petersburg, Poquoson, Portsmouth, Richmond, Staunton, Suffolk, Virginia Beach, Waynesboro, Williamsburg, and Winchester.

Receiving Waters: Surface waters within the Chesapeake Bay watershed, comprised of such waters within the Potomac, Rappahannock, York, and James River Basins, and the creeks and rivers of the Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay.

Restrictions: The Department of Environmental Quality (Department) will deny authorization to discharge under this general permit if the owner is proposing to discharge to surface waters specifically named in Board regulation which prohibit such discharges; if the discharge would violate the Virginia Water Quality Standards antidegradation policy; or if the discharge is not consistent with the assumption and requirements of an approved Total Maximum Daily Load (TMDL).

On the basis of preliminary review and application of lawful standards and regulations, the board proposes to issue the general permit subject to certain conditions and has prepared a draft permit. The board has determined that this category of discharges is appropriately controlled under a general permit. The category of discharges to be included involves facilities with the same or similar need to control nutrient levels in their wastewater discharges. The draft general permit requires that all covered facilities meet standardized effluent limitations, conditions and monitoring requirements and allows the exchange of nitrogen and phosphorus credits between certain covered facilities. This permit will maintain the Water Quality Standards adopted by the Board. This general permit will replace the general permit VAN000000 which expires on December 31, 2026. Owners covered under the expiring general permit who wish to continue to discharge under the general permit must register for coverage under the new permit.

All pertinent information is on file and may be inspected, and arrangements made for copying by contacting:

Laura Galli  
Virginia Department of Environmental Quality  
Office of VPDES Permits  
P.O. Box 1105, Richmond, Virginia 23218  
Phone: 804-573-5674  
Email: [laura.galli@deq.virginia.gov](mailto:laura.galli@deq.virginia.gov)

The process for issuing or amending a VPDES general permit regulation includes publication of a Notice of Intended Regulatory Action (NOIRA) with a 30-day comment period, forming and meeting with a Technical Advisory Committee (TAC), presenting the proposed regulation to the State Water Control Board (SWCB), publication of a Notice of Public Comment (NOPC) with a 60-day public comment period, holding a public hearing, and adoption of the final regulation by the SWCB.

The NOPC 60-day comment period is published in a newspaper, the Virginia Register, the Virginia Regulatory Town Hall (<https://townhall.virginia.gov/L/ViewBoard.cfm?BoardID=103>), and is provided to an open mailing list. The NOPC specifies the methods and appropriate contacts for commenting, as well as the date, time and place for the public hearing.

### **Administrative**

The general permit will have a fixed term of five (5) years effective, upon Board approval, January 1, 2027. Every authorization to discharge under this general permit will expire at the same time and all authorizations to discharge will be renewed on the same date. However, an owner is allowed to continue to discharge under the terms of their previous permit provided they have submitted a complete registration statement before the expiration date of the existing permit. This is also known as an administrative continuance and such a continuance is only available until the effective date of the reissued permit.

All persons desiring to be covered by this general permit must register with the Department by filing a registration statement and applicable fees. The majority of registrations will come from existing operations. Existing operations covered under the previous general permit seeking to retain coverage under the reissued general permit must file a new registration statement at least 60 days prior to expiration (prior to November 1, 2026).

All facilities that the Department believes are eligible for coverage under this general permit will be authorized to discharge under the terms and conditions of the permit after a complete registration statement is submitted, the applicable permit fee is paid, and the Department sends a copy of the general permit to the applicant.

### **Activities Covered by this Permit**

This general permit authorizes wastewater discharges of nitrogen and phosphorus from wastewater treatment facilities located in the Chesapeake Bay watershed that are already authorized by a VPDES individual permit. Although no additional action will be required of many facilities across the Commonwealth, three categories of facilities are required by law to register for coverage under this general permit:

- Sewage treatment works authorized to discharge 100,000 gallons or more per day (or an equivalent load from industrial processes), directly into tidal waters, or 500,000 gallons or more per day (or an equivalent load from industrial processes) directly into non-tidal waters. These facilities have already been identified during the development of the Chesapeake Bay Tributary Strategy; further, these facilities are listed in the Water Quality Management Planning regulation (9VAC 25-720) and have been assigned wasteload allocations for nitrogen and phosphorus, to be regulated as annual mass loading limits in the general permit. These facilities are required by law to register for general permit coverage upon the effective date of the general permit.
- Sewage treatment works that, as a result of new construction or expansion, are discharging or will discharge 40,000 gallons or more per day (or an equivalent load from industrial processes) directly into tidal or nontidal waters. These facilities are required to register for coverage under the general permit at the time of application with the Department for an individual VPDES permit, should that permit authorize new discharge or expansion that is subject to an offset or technology-based requirement. These facilities will not receive a wasteload allocation for the increased (or new) discharges; expanded and expanding facilities will receive an annual load limit based on the facility design flow and nutrient removal technology that existed as of July 1, 2005.
- New sewage treatment works that are permitted to discharge greater than 1,000 gallons per day and less than 40,000 gallons per day that have not commenced the discharge of pollutants prior to January 1, 2011, and are subject to offset requirements. These facilities are required to register for coverage under the general permit prior to commencing a discharge. These facilities will not receive a wasteload allocation for the new discharges and will be required to offset any new Total Nitrogen and Total Phosphorus load.

The general permit establishes annual effluent loading limits for nitrogen and phosphorus, and establishes the conditions by which credits (the difference in pounds between the facility's limit and the mass actually discharged) may be exchanged. The permit also establishes how new or expanding facilities may acquire additional wasteload allocation to offset any increase in nutrient load from the discharge.

**Effluent Limitations and Monitoring Requirements:**

This permit supersedes the requirements of the registrants' individual VPDES permits pertaining to total nitrogen and total phosphorus load limits except where site specific conditions necessitate more restrictive limits.

The Department maintains a registration list of facilities covered by the general permit. This list contains the load limits for the facilities; these limits are enforceable under the general permit.

**Basis for Limitations and Monitoring Requirements**

The Chesapeake Bay Tributary Strategy established goals for the reduction of point source discharges of nitrogen and phosphorus from "significant" dischargers (sewage treatment works discharging 100,000 gallons or more per day to tidal waters, or an equivalent industrial load, or sewage treatment works discharging 500,000 gallons or more per day to nontidal waters, or an equivalent industrial load). The Water Quality Management Planning Regulation (9 VAC 25-720) codified the point source goals in the Tributary Strategy as waste load allocations (WLAs) for the respective dischargers.

On December 29, 2010, the U.S. Environmental Protection Agency (EPA) established the Chesapeake Bay Total Maximum Daily Load (TMDL) for Nitrogen, Phosphorus, and Sediment. The TMDL applies to the Bay watershed within Delaware, Maryland, New York, Pennsylvania, Virginia, West Virginia, and the District of Columbia. The TMDL seeks to ensure pollution control measures needed to fully restore the Bay. Three phases of Watershed Implementation Plans (WIPs) were developed by each of the Bay jurisdictions outlining implementation paths toward accomplishing their Bay TMDL allocation goals. The Phase III WIPs contains strategies to ensure that the necessary pollution control measures are in place by the end of 2025.

§62.1-44.19.12 et seq. of the Code of Virginia requires that this general permit be developed and specifies the minimum contents of the general permit. The general permit incorporates the wasteload allocations (WLAs) in the Water Quality Management Planning Regulation (9 VAC 25-720) and the Chesapeake Bay TMDL as effluent limitations (loading caps) for nitrogen and phosphorus. In the case of conflicts between the Water Quality Management Planning Regulation and the TMDL, the more limiting WLA is used. The TMDL also includes WLAs for sediment. Sediment allocations are implemented in the form of Total Suspended Solids limitations in individual VPDES permits and are not included in the watershed general permit.

**Virginia's Watershed Implementation Plan for EPA's Chesapeake Bay TMDL for Nitrogen, Phosphorus and Sediment**

For the first 5-year term of the watershed general permit (1/1/2007 - 12/31/2011), WLAs were established by the Water Quality Management Planning Regulation (9VAC25-720). The allocations in the regulation were developed from the Commonwealth of Virginia Chesapeake Bay Nutrient and Sediment Reduction Tributary Strategy (January 2005).

In November 2010, Virginia submitted its first WIP to EPA. The initial Phase I WIP provided information to EPA to consider when it established point-source WLAs and non-point source load allocations within the Bay watershed segments designated as impaired. On December 29, 2010, the EPA established the Chesapeake Bay TMDL. The 2010 TMDL included nutrient WLAs in the York and James River Basins that were more restrictive than those contained in the original 2005 Tributary Strategies.

The second 5-year term of the watershed general permit (1/1/2012 – 12/31/2016) implemented additional nutrient reductions in accordance with Virginia's Phase I WIP. These reductions included a 43% reduction in Total Phosphorus WLAs in the York River Basin as well as Total Nitrogen and Total Phosphorus reductions from the Hampton Roads Sanitation District facilities in the James River Basin.

In March 2012, Virginia submitted its Phase II WIP to EPA. The Phase II WIP subdivided the Bay TMDL allocations into target areas at a local government level. In addition, the Phase II WIP augmented the Phase I WIP by providing more localized strategies, developed with input from Virginia's stakeholders and localities.

The third 5-year term of the watershed general permit (1/1/2017 – 12/31/2021) included additional Total Nitrogen reductions from the aggregate Hampton Roads Sanitation District WLA in the James River as well as reductions in the individual Total Phosphorus WLAs for all but two of the significant James River dischargers. These reductions in James River WLAs completed the reductions necessary to meet Dissolved Oxygen water quality criteria in the James River as outlined in the Phase I WIP and Appendix X to the TMDL. These reduced WLAs were listed in Section 80 of the 2017 watershed general permit regulation.

The fourth 5-year term of the watershed general permit (1/1/2022 – 12/31/2026) included new TN and TP delivery factors that were established using EPA's Phase 6.0 Chesapeake Bay Watershed Model for discharges west of the fall line for each river basin. Discharges located east of the fall line for each river basin are assigned a delivery factor of 1.0. These delivery factors are shown on the Registration List for each basin. Because the Virginia Nutrient Credit Exchange Association (the Exchange) had prepared a compliance plan that included trade agreements through 2025, the new delivery factors were not phased in until 2026. These delivery factors will be continued through the next 5-year permit term.

**Summary of Substantive Changes from the 2022 Nutrient General Permit**

<b>Current section number</b>	<b>New section number, if applicable</b>	<b>Current requirement</b>	<b>Change, intent, rationale, and likely impact of new requirements</b>
9VAC25-820-10		Definitions	The definition of Board was removed because the term has been replaced by “department” throughout the regulation. This reflects a change in the law, Chapter 356 of the 2022 Acts of Assembly, that shifted responsibilities from the Board to the department.
9VAC25-820-10		Definitions	The definition of “Nutrient Offset Fund” was added since this term is referenced in the regulation but not previously defined.
209VAC25-820-20; 9VAC25-820-70		Purpose, Applicability; General Permit	Revised the name of the regulation.
9VAC25-820-40.A		Compliance Plans Requires submittal of a compliance plan by February 1, 2023 for facilities identified in 9VAC25-820-80 A and by no later than January 1, 2026 for facilities listed in 9VAC25-820-80.B.	Removed current “compliance dates”. The existing dates are no longer relevant because the effective date of the reissued general permit is after the current compliance date.
9VAC25-820-40.B	9VASC25-820-40	Requires submission of annual compliance plan updates to DEQ.	This subsection has been renumbered to reflect the deletion of the compliance dates that had been in subsection A. There are no changes to the requirement.
9VAC25-820-70		General Permit	Updated the effective (2027) and expiration (2031) dates to reflect the reissuance date of the permit.
9VAC25-820-70		General Permit	Revised the name of the regulation.
9VAC25-820-70.Part I.A.1.a		Authorization to discharge for owners of facilities that submit a timely Registration Statement.	Updated the date of timely Registration Statement submittal from November 1, 2021 to November 1, 2026 to reflect a new reissuance cycle of the general permit.
9VAC25-820-70.Part I.A.3.a		Continuation of permit coverage	Updated the date of timely registration statement submittal from November 1, 2026, to November 1, 2031, to reflect a new reissuance cycle of the general permit.
9VAC25-820-70 Part I.B.3		Wasteload allocations  Authorizes two or more facilities discharging to the same tributary into a single regional facility to receive aggregated mass nutrient load limits.	Replaced the word “aggregate” with “consolidated” mass load limit. Removed the term “regional” referring to the receiving facility. The change clarifies situations where an owner diverts the discharge flow to a facility owned by a different entity, in contrast with Part I.B.2 which addresses “aggregate load limits” for individual facilities under common ownership.  This change has been applied subsections a through e.
	9VAC25-820-70 Part I.B.4		Termination of a wasteload allocation. Added to clarify what happens to a wasteload allocation

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VPDES General Permit for Nutrient Discharges and Nutrient Trading in the Chesapeake Bay Watershed

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
			when a facility's permit is terminated or allowed to expire without flow diversion to another facility.
9VAC25-820-70 Part 1.C.1		Schedules of compliance pertaining to the TN and TP load allocations that apply to facilities listed in section -80.A.	Removed reference to the facilities listed in 9VAC25-720-120 as they have already met compliance. Removed reference to the facilities listed in 9VAC25-820-80.B as they will meet compliance by the end of the current permit cycle.
9VAC25-820-70 Part I.1.C.3		Schedule of compliance pertaining to facilities listed in -80.B.	Removed language referring to compliance dates that will have passed by the date of reissuance of the general permit.
9VAC25-820-70 Part I E.1		Monitoring Requirements	<p>Table columns were re-ordered to list the design flow ranges from lowest to highest to improve readability of the information displayed in the table.</p> <p>Split the 1.0-19.999 MGD STP Design Flow range into 1.0-4.99 MGD and 5.0-19.999 MGD, with the respective effluent TN and TP industrial load limits.</p>
9VAC25-820-70 Part I E.1		Monitoring Requirements	<p>Added 1 day/week 24 HC for the 1.0-4.99 MGD flow range.</p> <p>Changed 0.5-0.999 MGD monitoring frequency from 2 days/week 8 HC to 1 day/week 8 HC.</p> <p>Defined HC (hour composite).</p>
	9VAC25-820-70 Part I.E.1.6	Monthly average concentration reporting	Added language for the reporting procedures of monthly average concentrations for TP, TKN and nitrate+nitrite or clarity and consistency with the language included in the VPDES individual permits.
9VAC25-820-70 Part I.G.1.a		November 1, 2016	Updated to November 1, 2031, to reflect a new reissuance cycle of the general permit.
9VAC25-820-70 Part I.J.3		Credit acquisitions from the Nutrient Offset Fund	Updated the cost of credits per pound of Nitrogen from \$5.08 to \$9.23 and per pound of phosphorus from \$11.15 to \$20.26. These prices reflect the average cost of nutrient removal at projects financed by the Water Quality Improvement Fund over the previous 5 years and account for grants, matching funds, and operational costs.
9VAC25-820-70 Part II B.1.a		Acquisition of wasteload allocations	Added reference to the option of obtaining point source credits through the Virginia Nutrient Credit Exchange Association. Also added language to specify that "annual point source credits" can be used to offset new or increased TN and TP loads.
9VAC25-820-70 Part III.I		Part III contains conditions applicable to all permits.	Updated language for reporting outside of normal working hours.

Current section number	New section number, if applicable	Current requirement	Change, intent, rationale, and likely impact of new requirements
9VAC25-820-80.A	9VAC25-820-80	Facilities subject to reduced individual total nitrogen and total phosphorus wasteload allocations – Enhanced Nutrient Removal Certainty (ENRC) Program Facilities	Removed HRSD – York River STP as this facility has already met compliance with the ENRC reduced wasteload allocation.
9VAC25-820-80.B		Facilities subject to reduced individual total nitrogen and total phosphorus wasteload allocations – Chlorophyll-a based total phosphorus wasteload allocations	Removed. All facilities listed have achieved compliance or will achieve compliance by the expiration date of the current permit.

**Basis for Part I Special Conditions**

These special conditions apply to every registrant under this general permit.

A. Authorized activities

Basis: §62.1-44.19:14.C.5 of the Code of Virginia authorizes the discharge of total nitrogen and total phosphorus for facilities already holding an individual VPDES permit and outlines the registration requirements for existing, new and expanded facilities. Facilities holding an individual VPDES permit that are not required to register for general permit coverage are authorized to discharge under this general permit, but are not subject to the general permit requirements until registration is required (most likely by expansion). This subdivision includes provisions (A.3.) for the continuation of permit coverage that are consistent with the provisions applicable to individual VPDES permits under 9 VAC 25-31-70.

B. Wasteload allocations

Basis: §62.1-44.19:14.C.1 of the Code of Virginia specifies that waste load allocations be assigned to each permitted facility (B.1.) and provides additional guidance for how those allocations may be aggregated for owners of multiple facilities (B.2.).

B.3: During development of the general permit, consolidation of multiple dischargers into one regional facility was considered functionally similar to the aggregation of wasteload allocations, and conditions developed accordingly to account for consolidation of facilities with, and without, wasteload allocations. For the 2027 permit reissuance, the term “aggregated” is replaced with “consolidated” to differentiate between facilities that shut down and divert flow to another facility (consolidation, or transfer, of a wasteload allocation) and facilities whose wasteload allocations are aggregated under common ownership, as addressed in Part I.B.2.

B.4: This condition was added to explain what happens to a facility’s wasteload allocation when the facility’s individual and general permits are terminated or allowed to expire with no flow diversion to another facility. As long as the permits are kept active, even when there is no discharge, the wasteload allocation is retained and may be used for trading.

C. Schedule of Compliance

Basis: 9 VAC 25-31-250 allows for schedules of compliance when appropriate requiring compliance with effluent limitations as soon as possible.

D. Annual update of tributary wide compliance plan

Basis: §62.1-44.19:14.C.3 of the Code of Virginia requires annual updates to the plan no later than February 1 of each year.

E. Monitoring and monthly reporting requirements

Basis: §62.1-44.19:14.C.4 of the Code of Virginia authorizes the Department to establish monitoring requirements as necessary to comply with the legislation. Permittees will submit monthly loading data on the same date as is required by their respective individual permits.

The monitoring frequencies established for the 2007 and 2012 permit terms were as follows:

2007 & 2012 Sampling Frequencies			
< 0.040 MGD	0.040 - 0.99 MGD	1.0 - 19.99 MGD	20+ MGD

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1/Month	2/Month	1/Week	3 Days/Week
Grab	8-HC	24-HC	24-HC

In 2014, EPA provided a technical memorandum meant to address the load calculation methodology and sampling frequency of Chesapeake Bay watershed wastewater treatment plants and to identify an approach that should result in data sufficient to support Chesapeake Bay jurisdictions' trading and offset programs. The memorandum specifically noted that it was not official agency guidance and did not replace the EPA 2003 Trading Policy. The result of the memorandum, which considered one to two years data from two facilities with annual average flows exceeding 20 MGD (one in Virginia, one in Pennsylvania), was a recommendation that three or more samples per week for both TN and TP would generate data sufficient to support credit calculation for the purposes of water quality offset and/or trading programs.

The recommendations of the 2014 technical memorandum were discussed by the technical advisory committee during the 2017 reissuance process and resulted in a proposal to divide the 0.040-0.99 MGD flow range and the 1.0-19.99 MGD flow range into four tiers as presented in the table below. The proposal would have resulted in an increased sampling frequency for both the 0.5-0.99 MGD and 5.0-19.99 MGD flow tiers.

2017 (Proposed)					
< 0.040 MGD	0.040 - 0.499 MGD	0.5 - 0.99 MGD	1.0 - 4.99 MGD	5.0 - 19.99 MGD	20+ MGD
1/Month	2/Month	1/Week	1/Week	2/Week	3 Days/Week
Grab	8-HC	8-HC	24-HC	24-HC	24-HC

EPA objected to the proposed frequencies in a March 2016 letter and provided an additional 2016 Statistical Analysis recommending a 2/Week sampling frequency for facilities in the 0.5-0.99 MGD and 1.0-4.99 MGD flow tiers and recommending that these sampling frequencies be revisited at the next reissuance.

EPA's 2016 Statistical Analysis evaluated one year of data (2015) for 43 facilities in the 0.5-0.99 MGD and 1.0-4.99 MGD ranges. From that initial dataset, the analysis narrowed in scope to 14 facilities that, in the analysis, demonstrated "a high degree of variability among months for the same load" as determined by instances of exceeding a 1% probability Z-score of  $\pm 2.57$ .

DEQ staff performed a follow-up statistical analysis utilizing the same methods for the same 14 facilities identified in the EPA's 2016 analysis, but expanded the dataset to 2009-2015 to be more representative. Further, DEQ staff performed the 1% probability Z-score analysis for all Nutrient GP facilities across all flow tiers. The results of the two DEQ analyses supported maintaining the proposed sampling frequencies for the 0.5-0.99 MGD and 1.0-4.99 MGD ranges, as noted below.

- For the total nitrogen analysis of the 14 facilities, DEQ calculated 756 months of data and 15 total exceedances of a  $\pm 2.57$  Z-score (1.98% of data set). This is compared to an 8.33% exceedance rate in EPA's analysis.
- For the total phosphorus analysis of the 14 facilities, DEQ calculated 588 months of data and 9 total exceedances of a  $\pm 2.57$  Z-score (1.53% of data set). This is compared to an 8.33% exceedance rate in EPA's analysis.
- The analysis of all facilities in the 0.5-0.99 MGD range, currently sampling at a frequency of 2/Month, demonstrated that the data is representative and capturing variability for total nitrogen 98.3% of the time and for total phosphorus 98.9% of the time, as defined by a 1% probability Z-score.
- The analysis of all facilities in the 1.0-4.99 MGD range, currently sampling at a frequency of 1/Week, demonstrated that the data is representative and capturing variability for total nitrogen 98.7% of the time and for total phosphorus 98.0% of the time, as defined by a 1% probability Z-score.

Despite the additional data evaluation provided by DEQ staff, the monitoring frequencies were adjusted for the 2017 permit to address EPA's objection with the intent to revisit them at the following reissuance. The resulting frequencies, shown below, retained the 1.0-19.99 MGD flow tier while increasing the sampling frequency from 1/Week to 2/Week and further increased the 0.5-0.99 MGD flow tier frequency from the original 2/Month to 2/Week.

2017 (Final)				
< 0.040 MGD	0.040 - 0.499 MGD	0.5-0.99 MGD	1.0 - 19.99 MGD	20+ MGD
1/Month	2/Month	2/Week	2/Week	3 Days/Week
Grab	8-HC	8-HC	24-HC	24-HC

The above frequencies were not revisited during the 2022 reissuance process and were carried forward. However, for the 2027 permit reissuance, the members of the technical advisory committee recommended a re-evaluation and consideration of the proposed 2017 monitoring frequencies. This would include once again splitting the 1.0-19.99 MGD flow tier into 1.0-4.99 MGD and 5.0-19.99 MGD tiers, reducing the monitoring frequency for the 1.0-4.99 MGD flow tier to the original 1/Week frequency, and reducing the monitoring frequency for the 0.5-0.99 MGD flow tier to 1/Week, maintaining an increase in frequency from the original 2/Month.

As part of this consideration, DEQ presented to EPA a summary of DEQ's 2016 statistical analyses as described above in support of the revised monitoring frequencies. Further, DEQ presented a comparison of the proposed monitoring frequencies to those in other Nutrient General Permits. Notably, EPA's Great Bay Total Nitrogen General Permit includes a 1/Week sampling frequency for facilities with design flows ranging up to 6.13 MGD. Further, Connecticut's General Permit for Nitrogen Discharges (Long Island Sound) includes 1/Week sampling for facilities less than 10 MGD. DEQ's proposed monitoring frequencies are as frequent or more frequent than those found in other states.

Additionally, DEQ provided EPA with the following rationale in support of the revised monitoring frequencies:

- A VPDES Individual Permit is a prerequisite for registration under the general permit regulation, and while the general permit sets the minimum required sampling and reporting frequencies for nutrient load monitoring, monitoring frequencies included in Individual Permits are evaluated on a case-by-case basis and may be more frequent to address technology-based, local TMDL-based, and/or water quality-based effluent limitations.
- Facilities that were issued a VPDES Individual Permits on or after July 1, 2005, that fall into the two design flows ranges with proposed monitoring frequency updates (0.5-0.99 and 1.0-4.99 MGD) are also subject to technology-based concentration limits based on [9VAC25-40-70.A](#) 3.b or 4.
- Both VPDES Individual Permits and general permit regulations include requirements to take samples and measurements that are representative of the monitoring activity.
- If concerns of non-representative sample bias were to arise, they would be addressed on a case-by-case basis by DEQ's Compliance program.

Given the supporting data and rationale provided above, and the comparison to similar permits across the nation, DEQ proposes the following monitoring frequencies for the 2027 permit reissuance, which mirror what was proposed in 2017. DEQ believes that the revised monitoring frequencies are sufficient to yield data which are representative of the monitored activity (per 40 CFR §122.48(b)) and will capture loading variability for accurate accounting of annual loads.

2027					
< 0.040 MGD	0.040-0.499 MGD	0.5-0.99 MGD	1.0 - 4.99 MGD	5.0 – 19.99 MGD	20+ MGD
1/Month	2/Month	1/Week	1/Week	2/Week	3 Days/Week
Grab	8-HC	8-HC	24-HC	24-HC	24-HC

F. Annual submittal of discharge information by the permittee

Basis: §62.1-44.19:18.C of the Code of Virginia requires the submittal of the annual mass load of total nitrogen and total phosphorus loads discharged.

G. Requirement to register

Basis: §62.1-44.19:14.C.5 of the Code of Virginia outlines the registration requirements for existing, new and expanded facilities.

H. Registration statement

Basis: §62.1-44.19:14.C.6 of the Code of Virginia requires that the Department have a procedure for efficiently modifying the lists of facilities covered by the General Permit. This subdivision includes a provision requiring that at the time of registration, new or expanding facilities provide WLAs to offset any increase in nutrient loads for a period of at least 5 years.

In 2015, the EPA published the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule. The federal rule requires the use of electronic reporting instead of paper-based reporting. Effective July 2017, the VPDES Permit Regulation was amended to incorporate the federal Electronic Reporting Rule. Part XI of the VPDES Permit Regulation (9VAC 25-31-950 through -1030) establishes requirements for the electronic reporting of information by VPDES permittees, including facilities or entities seeking coverage under VPDES general permits.

I. Public Notice for registration statements proposing modifications or incorporations of new waste load allocations or delivery factors

## FACT SHEET

### VPDES General Permit for Nutrient Discharges and Nutrient Trading in the Chesapeake Bay Watershed

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Basis: §62.1-44.19:14.C.6 of the Code of Virginia requires that the Department have a procedure for efficiently incorporating new waste load allocations or delivery factors, including the opportunity for public notice and comment.

#### J.1. Compliance by permitted facility with individual waste load allocations

Basis: §62.1-44.19:18.A of the Code of Virginia defines compliance as not exceeding the waste load allocations, or acquiring sufficient point source nitrogen or phosphorus credits to offset any exceedance of the waste load allocations, or acquiring credits through payment to the Nutrient Offset Fund.

#### J.2. Credit acquisition from permitted facilities

Basis: §62.1-44.19:18.A.1 of the Code of Virginia outlines the conditions under which credits may be exchanged between point sources covered by the general permit. This subdivision carries forward a 2017 general permit provision allowing for Eastern Shore facilities to acquire credits from facilities in the Potomac and Rappahannock tributaries in accordance with §62.1-44.19:18.A.1(ii). Eastern Shore trading ratios have been established so that credits acquired from the Rappahannock or Potomac Basins provide a water quality benefit equivalent to the impact of the excess load from the Eastern Shore facility in need of the credits.

#### J.3. Detail of payment to Nutrient Offset Fund

Basis: §62.1-44.19:18.A.2. of the Code of Virginia outlines the procedures by which a permittee may purchase credits through payment to the Nutrient Offset Fund. Prices of credits purchased from the Fund have been updated based on staff judgement of an increase in unit costs relative to the previous permit cycle.

#### J.4. Pretreatment program modifications by POTWs

Basis: §62.1-44.19:14.C.7. of the Code of Virginia authorizes DEQ to include “such other conditions as the Board deems necessary to carry out the provisions of this Chapter and Section 402 of the Clean Water Act”. This condition is being carried forward from the previous permit cycle. During the development of the 2017 general permit, several indirect dischargers requested the inclusion of this condition to allow the extension of market-based compliance flexibility to pretreatment programs, where the POTW imposed additional requirements as part of compliance with this general permit.

### **Basis for Part II Special Conditions**

These special conditions apply only to new and expanding facilities that are subject to this general permit.

#### A. Offset requirements for expanding and new facilities

Basis: §62.1-44.19:15 of the Code of Virginia requires expanding facilities to obtain offsets above and beyond their currently permitted allocation, and new facilities to obtain offsets for any total nitrogen and total phosphorus discharged. A.1. describes the types of facilities required to offset new and expanded discharges, and A.2. specifies the baselines from which the offset requirements are to be calculated.

#### B. Acquisition of waste load allocations to offset new or increased delivered Total Nitrogen and delivered Total Phosphorus loads

Basis: §62.1-44.19:15.B of the Code of Virginia prescribes the acquisition of nitrogen and phosphorus WLAs to offset new or increased loads. Allocations may be provided in the form of WLAs acquired from other point sources; point source nitrogen or phosphorus credits; nonpoint credits certified by the Board pursuant to §62.1-44.19:20; allocations acquired through payments to the Nutrient Offset Fund; or allocations acquired through other means as may be approved by the department on a case-by-case basis. This subdivision carries forward Part II.B.1.b.(1) provisions added during the 2017 general permit cycle allowing for nonpoint source to point source trading ratios of less than 2:1 when specific criteria are met. Allocations to offset new or increased nutrient loads must be provided for a period of five years with each registration under the general permit.

### **Basis for Part III Special Conditions**

Basis: These conditions are applicable to all VPDES permits in accordance with 9 VAC 25-31-190. These conditions were modified to account for activities not applicable to this general permit.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-820
<b>VAC Chapter title(s)</b>	General Virginia Pollutant Discharge Elimination System (VPDES) Watershed Permit Regulation for Total Nitrogen and Total Phosphorus Discharges and Nutrient Trading in the Chesapeake Bay Watershed in Virginia
<b>Action title</b>	CH 820-2026 Amendment and Reissuance of the Existing Regulation
<b>Date this document prepared</b>	March 16, 2026
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Final – There have been no changes made to this analysis since the previous stage of this action.

**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.

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b><u>Background</u></b> This general permit regulation governs facilities that hold individual VPDES permits and discharge or propose to discharge total nitrogen or total phosphorus, or both, to the Chesapeake Bay or its tributaries. The</p>
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	<p>facilities are authorized to discharge to surface waters and exchange credits for total nitrogen or total phosphorus, or both. Nitrogen and phosphorus are both nutrients.</p> <p>This regulatory action is proposed to amend and reissue the existing general permit which expires on December 31, 2026. VPDES general permit regulations expire every 5 years and must be re-issued in order for permit coverage to be available to existing facilities to continue coverage and new entities to be able to obtain coverage for conducting this regulated activity.</p> <p>Presently there are 142 regulated entities covered by this general permit. Reissuance of this general permit allows existing facilities to continue coverage and new entities to be able to obtain coverage for conducting this regulated activity. The proposed amendments update the permit term, and include revising monitoring frequencies requirements, removal of outdated compliance schedules, addition of language for terminated wasteload allocations, addition of a new option to receive point source credits from the Virginia Nutrient Credit Exchange Association, and other clarifying language throughout</p> <p><b>Direct Costs:</b> The proposed changes are not expected to result in any additional direct costs to the regulated community since they provide an optional approach for some members of the regulated community (based on the facility’s design flow range) to reduce their monitoring frequencies.</p> <p><b>Indirect Costs:</b> The proposed changes are not expected to result in any additional indirect costs to the regulated community since they provide an optional approach for some members of the regulated community to reduce their monitoring frequencies.</p> <p><b>Direct Benefits:</b> The reissuance of this general permit provides the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity while continuing to be protective of human health and the environment.</p> <p>It also lowers the monitoring frequency requirements for some permittees, which will result in reduced costs and lower burdens. Reducing the monitoring requirements for permittees will result in a decreased regulatory burden. Lowering the monitoring frequencies will save staff and administrative time.</p> <p>Facilities with design flow ranges between 0.5-0.999 million gallons per day (MGD) (24 facilities) and 1.0 – 4.99 MGD (41 facilities) that currently sample twice a week will only be required to collect one</p>
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	<p>composite sample that is sent to the lab. Reducing the frequency to once per week will save approximately \$5,500 per year for each affected facility.</p> <p><b>Indirect Benefits:</b> The reissuance of the regulation will indirectly benefit economic development because it enables permittees to conduct activities under a general permit that is protective of human health and the environment. Regulating discharges also benefits tourism and multiple industries by protecting water quality, aquatic habitats, and recreational use of state waters.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See above regarding direct costs. No direct or indirect costs are expected due to the limited extent of the changes being made to the general permit regulation	(b) See above regarding direct and indirect benefits.
(3) Net Monetized Benefit	<p>Reducing monitoring frequency will result in lessened costs and burdens on the related facilities. A cost savings of approximately \$5,500 per year per facility for both the 0.5-0.999 MGD and 1.0- 4.99 MGD flow ranges would be gained from sampling once per week versus twice per week. (If all 24 of the facilities in the 0.5-0.999 MGD flow range opted for reduce monitoring frequencies there would be a cost savings of \$137,500 and if all 41 of the facilities in the 1.0 – 4.99 flow range opted for reduced monitoring frequencies there would be a savings of \$225,500 for a total of \$363,000.)</p>	
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources	<p>Members of the Technical Advisory Committee reported their typical compliance monitoring costs.</p>	

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p>None. The general permit regulation expires on December 31, 2026, ending coverage for all currently regulated facilities.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See information in Table 1a.	(b) See information in Table 1a
(3) Net Monetized Benefit	None. Continuing under the status quo would not revise the monitoring frequency requirements for the regulated community. This would prevent the regulated community from seeing any savings from a revised monitoring frequency.	
(4) Other Costs & Benefits (Non-Monetized)		
(5) Information Sources	See Table 1a	

**Table 1c: Costs and Benefits under Alternative Approach**

(1) Direct & Indirect Costs & Benefits (Monetized)	§ 62.1-44.19:14 of the Code of Virginia directs the Board to issue a Watershed General Virginia Pollutant Discharge Elimination System Permit (i.e., a general permit) authorizing point source discharges of total nitrogen and total phosphorus to the waters of the Chesapeake Bay and its tributaries. Because this is a statutory directive, there is not an alternative approach to issuing this regulation.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**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)	<p>All counties, cities and incorporated towns located in the Chesapeake Bay watershed that operate a facility subject to this regulation would be affected by the amendments regulatory change. Localities would have the same benefits as other entities. See Table 1a.</p> <p>However, there is the potential for the proposed changes to have direct and indirect benefits to the economies of local communities where the regulated facilities are located.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See Table 1a.	See Table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See Table 1a.	
(4) Assistance	N/A	
(5) Information Sources	N/A	

**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)	<p>The proposed changes are not expected to result in any additional direct costs to families as they do not add any additional requirements or place any burdens on them.</p> <p>General permits provide the regulated community with a streamlined, less burdensome approach to obtain coverage from conducting a specific regulated activity.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None	(b) See Table 1a.
(3) Other Costs & Benefits (Non-Monetized)	None.	
(4) Information Sources	See Table 1a.	

**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>The proposed changes are not expected to result in any direct costs to small businesses as there are no additional requirements or burdens being placed on them. Small businesses will directly benefit from a reduced monitoring frequency.</p> <p>General permits provide the regulated community with a streamlined, less burdensome approach to obtain coverage for conducting a specific regulated activity.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) See Table 1a.	(b) See Table 1a.
(3) Other Costs & Benefits (Non-Monetized)	See Table 1a.	
(4) Alternatives		
(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*

<b>VAC Section(s) Involved*</b>	<b>Authority of Change</b>	<b>Initial Count</b>	<b>Additions</b>	<b>Subtractions</b>	<b>Total Net Change in Requirements</b>
9VAC25-820-10	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>0</b>	0	0	0
	<b>(D/R):</b>	<b>0</b>	0	0	0
9VAC25-820-15	<b>(M/A):</b>	<b>1</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>0</b>	0	0	0
	<b>(D/R):</b>	<b>0</b>	0	0	0
9VAC25-820-20	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>0</b>	0	0	0
	<b>(D/R):</b>	<b>0</b>	0	0	0
9VAC25-820-30	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>3</b>	0	0	0
	<b>(D/R):</b>	<b>0</b>	0	0	0
9VAC25-820-40	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>2</b>	0	-1	-1
	<b>(D/R):</b>	<b>0</b>	0	0	0
9VAC25-820-50	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>4</b>	0	0	0
	<b>(D/R):</b>	<b>0</b>	0	0	0
9VAC25-820-60	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>1</b>	0	0	0
	<b>(D/R):</b>	<b>0</b>	0	0	0
9VAC25-820-70	<b>(M/A):</b>	<b>16</b>	0	0	0
	<b>(D/A):</b>	<b>13</b>	0	0	0
	<b>(M/R):</b>	<b>73</b>	0	-2	-2
	<b>(D/R):</b>	<b>10</b>	0	0	0

9VAC25-820-80	<b>(M/A):</b>	<b>0</b>	0	0	0
	<b>(D/A):</b>	<b>0</b>	0	0	0
	<b>(M/R):</b>	<b>0</b>	0	0	0
	<b>(D/R):</b>	<b>0</b>	0	0	0
				<b>Grand Total of Changes in Requirements:</b>	<b>(M/A): 0*</b> <b>(D/A): 0*</b> <b>(M/R): -3*</b> <b>(D/R): 0*</b>

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting the agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

\* The proposed changes are not expected to result in any additional costs to the regulated community since they provide some members an optional approach to reduce their monitoring frequencies. Lowering the monitoring frequency requirements for permittees will result in reduced costs and lower burdens. Lowering the monitoring frequencies will save staff and administrative time

*Cost Reductions or Increases (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Requirement</b>	<b>Initial Cost</b>	<b>New Cost</b>	<b>Overall Cost Savings/Increases</b>
9VAC25-820-70	The facilities with design flow rates between 0.5-0.999 MGD and 1.0 – 4.99 MGD that currently sample twice a week will be required to collect one composite sample that is sent to the lab. This is expected to save approximately	\$11,000 per facility per year related to costs for sample preparation and collection.	Cost savings of \$5,500 per year for 66 facilities with flow rates of 0.5 MGD to 4.99 MGD.	\$5,500 * 66 facilities = \$363,000 total cost savings per year.

	\$5,500 per year per facility for both flow ranges.			

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Change</b>	<b>Overview of How It Reduces or Increases Regulatory Burden</b>
9VAC25-820-70	The facilities with design flow rates between 0.5-0.999 MGD and 1.0 – 4.99 MGD that currently sample twice a week are allowed to combine these two samples into one composite sample that is sent to the lab. The reduction of sampling frequency from twice a week to once a week would remove the need for this option.	Reducing the frequency to once per week will not provide a relief from lab costs, but will provide savings from the facilities’ personnel time and resources. Reducing the need for sample equipment preparation, sampler set-up and sample collection would save approximately \$5,500 per year per facility for both flow ranges.
9VAC25-820-40	Removed requirements for compliance with chlorophyll-a based total phosphorus wasteload allocations and individual dates for compliance since the deadline to achieve these requirements will have passed when the proposed permit will become effective.	Removing outdated regulatory requirements makes the regulation easier to read and follow for regulated entities.

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

<b>Title of Guidance Document</b>	<b>Original Word Count</b>	<b>New Word Count</b>	<b>Net Change in Word Count</b>
N/A			

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).

**TAB C**



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**


www.deq.virginia.gov

David L. Bulova  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

**MEMORANDUM**

TO: State Water Control Board Members

FROM: Neil Zahradka, Manager, Office of Land Application Programs 

DATE: March 17, 2026

SUBJECT: Final Amendments to the Virginia Pollution Abatement (VPA) Permit Regulation: Implementation of Chapter 209 of the 2024 Acts of Assembly (HB 870) – Procedures for Emergency Management of Biosolids to Protect Against the Release of Biosolids into State Waters, and to Account for Increased Intensity, Frequency, and Duration of Storm Events

At the April 7, 2026, meeting of the State Water Control Board (Board), staff will present to the Board final amendments to the VPA Permit Regulation, 9VAC25-32, and request final adoption of the amendments.

**Background**

Chapter 209 of the 2024 Acts of Assembly (HB 870, Del. Bulova) requires the Board, with the assistance of the Departments of Conservation and Recreation and Health, to adopt regulations that include procedures

for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to account for increased intensity, frequency, and duration of storm events.

The legislation and state law refer to “sewage sludge.” Sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-32-356, may be land applied, marketed, and distributed in accordance with the VPA Permit Regulation. This type of sewage sludge is known as “biosolids,” which are the subject of this regulatory action.

The Notice of Public Comment (NOPC) was approved by the Board on August 20, 2025. The public comment period was held from December 1, 2025, to January 30, 2026, and six public

comments were received. A summary of the comments received and the Department of Environmental Quality's (DEQ) responses to those comments are included in the attached Agency Background Document, Form TH-03.

### **Amendments made during the Proposed Stage**

In order to meet the requirements specified in Chapter 209 of the 2024 Acts of Assembly, the amendments propose a mechanism in which biosolids land appliers holding a VPA permit may submit an "emergency management plan" to DEQ for approval. The emergency management plan would outline the land applier's annual volume of biosolids managed, along with an accounting of their available biosolids storage. The plan would also include a description of conditions that might overwhelm their available biosolids storage capacity, and at what threshold(s) they may need to initiate an emergency management plan.

Each permit holder's emergency management plan would be unique to their individual context, and could identify additional emergency storage locations (subject to DEQ approval), as well as planned deviations from certain permit requirements, such as:

- 1) the land application of biosolids from on-site storage locations at additional locations;
- 2) increasing the volume of biosolids that may be stored at on-site storage locations;
- 3) increasing the time biosolids may be stored at on-site storage locations;
- 4) reducing the amount of time between posting of land application notice signs and commencement of land application activity (i.e. less than the required 5 business days);  
and
- 5) other changes to procedures specified in the permit holder's operations and maintenance manual not specified by the VPA permit.

DEQ would review the submitted emergency management plan for consistency with the regulatory allowances, and if the plan met the requirements, approve the plan for implementation if the weather and storage limitations specified in the plan were realized.

A permit holder would notify DEQ at such time that emergency conditions exist, initiate their approved emergency management plan, and be subject to additional reporting and notification requirements while the plan was implemented. An emergency management plan would conclude when the conditions causing limitations to land application cease.

Proposed amendments to the VPA Permit Regulation include the following changes to sections 9VAC25-32-410 and 9VAC25-32-550:

**Section 410:** This section details the components of the "Biosolids Management Plan" that a biosolids land applier must develop and submit to DEQ for all permits. The current components include the site books in the permit application, nutrient management plans for each land application site, and an operations and maintenance manual. The proposed amendment adds the option to include an emergency management plan as part of the Biosolids Management Plan, and includes requirements for emergency management plan content, instructions for initiation, instructions for approval, as well as implementation and reporting procedures.

**Section 550:** This section currently details the specifications for two types of storage facilities: on-site and routine. The proposed amendment adds a third category describing the requirements for emergency storage and includes details on definitions, requirements, limits, reporting, access, and inspections. The requirements for emergency storage align closely with those for on-site storage.

### **Changes since the Proposed Stage**

**Section 410:** Non-substantiative revisions to the regulatory language were made to improve clarity, consistency, and improve precision of terminology. These updates clarify when an emergency plan requires approval and differentiate between plan initiation and plan implementation. Additionally, it was necessary to re-order sections F.4 - F.6 for improved readability and chronological alignment. F.7 was incorporated into F.4.f. One substantive change since the proposed stage was made to F 6 (previously F 4 in the Proposed Regulation). In response to public comment, the time period to submit changes in the emergency management plan has been extended to 90 days, which is consistent with the time period specified in existing VPA permits to submit changes in Operations and Maintenance plans.

**Section 550:** Non-substantiative updates to the regulatory language were made to improve clarity, consistency, and improve precision of terminology. These updates ensure clarity regarding approval of emergency storage sites and ensure requirements for emergency storage sites are clearly written.

### **Attorney General Certification**

The Office of the Attorney General reviewed the proposed regulation and provided certification of statutory authority in a memo dated August 21, 2025. The Office of the Attorney General has been provided with a copy of the final amendments to the regulation and will be requested to re-certify the Board's authority to adopt the final regulation.

### **Staff Recommendation**

DEQ recommends the Board approve the amendments to the biosolids storage requirements in the VPA Permit Regulation (9VAC25-32) as a final regulation.

### **Presenter Contact Information**

Name: Neil Zahradka  
Phone: (804) 698-4102  
Email: Neil.Zahradka@deq.virginia.gov

### **Attachments**

Attachment A: List of Regulatory Advisory Panel members  
Attachment B: Final Regulation Agency Background Document (TH03)

Board Memo  
March 17, 2026  
VPA Permit Regulation, HB870

Attachment C: Text of Final Amendments to the VPA Permit Regulation: Implementation of  
Chapter 209 of the 2024 Acts of Assembly (HB 870)  
Attachment D: ORM Economic Review Form

**Regulatory Advisory Panel Membership for the RAP for the Virginia Pollution Abatement (VPA) Permit Regulation, 9VAC25-32, Implementation of Chapter 209 of the 2024 Acts of Assembly (HB870)**

- **Representatives of the Regulated Community**

- Virginia Association of Municipal Wastewater Agencies (VAMWA): Milas E. Smith Jr., Director of Operations, Fauquier County Water and Sanitation Authority; Alternate: Lisa Ochsenhirt, AquaLaw
- Virginia Biosolids Council: John Uzupis, Technical Services Manager, Synagro Central, LLC; Alternate: Robert Crockett, Virginia Biosolids Council

- **Representatives of Agribusiness Organizations**

- Virginia Farm Bureau: Martha Moore, Senior Vice-President for Government Relations; Alternate: Bryan Johnson, Senior District Field Service Director
- Virginia Agribusiness Council: Trey Davis; Alternate: Brad Copenhaver

- **Representatives of Environmental Groups**

- Chesapeake Bay Foundation: Mike Gerel; Alternate: Patrick Fanning,
- Potomac Riverkeeper Network: David Flores
- James River Association: Tom Dunlap, James RiverKeeper; Alternate: Jamie Brunkow, Director of River Ecology

- **State and Local Government**

- Chesapeake Bay Commission: Adrienne Kotula
- Virginia Association of Counties: James Hutzler; Alternate: Joe Lerch

- **Other State Agencies**

- Virginia Department of Conservation and Recreation: Nicholas Moody, Nutrient Management Coordinator – Biosolids; Alternate: Seth Mullins, Nutrient Management Coordinator – Animal Waste
- Virginia Department of Health: Julie Henderson, Director, Office of Environmental Health Services

- **DEQ Staff**

- Bryan Cauthorn, Biosolids Program Coordinator; Alternate: John Thompson - Biosolids Permits Supervisor

# VIRGINIA ACTS OF ASSEMBLY -- 2024 SESSION

## CHAPTER 209

*An Act to amend and reenact § 62.1-44.19:3 of the Code of Virginia, relating to sewage sludge regulations; relief from administrative requirements; adverse and unusual weather events.*

[H 870]

Approved March 28, 2024

**Be it enacted by the General Assembly of Virginia:**

**1. That § 62.1-44.19:3 of the Code of Virginia is amended and reenacted as follows:**

**§ 62.1-44.19:3. Prohibition on land application, marketing and distribution of sewage sludge without permit; ordinances; notice requirement; fees.**

A. 1. No owner of a sewage treatment works shall land apply, market or distribute sewage sludge from such treatment works except in compliance with a valid Virginia Pollutant Discharge Elimination System Permit or valid Virginia Pollution Abatement Permit.

2. Sewage sludge shall be treated to meet standards for land application as required by Board regulation prior to delivery at the land application site. No person shall alter the composition of sewage sludge at a site approved for land application of sewage sludge under a Virginia Pollution Abatement Permit or a Virginia Pollutant Discharge Elimination System. Any person who engages in the alteration of such sewage sludge shall be subject to the penalties provided in Article 6 (§ 62.1-44.31 et seq.) of this chapter. The addition of lime or deodorants to sewage sludge that has been treated to meet land application standards shall not constitute alteration of the composition of sewage sludge. The Department may authorize public institutions of higher education to conduct scientific research on the composition of sewage sludge that may be applied to land.

3. No person shall contract or propose to contract, with the owner of a sewage treatment works, to land apply, market or distribute sewage sludge in the Commonwealth, nor shall any person land apply, market or distribute sewage sludge in the Commonwealth without a current Virginia Pollution Abatement Permit authorizing land application, marketing or distribution of sewage sludge and specifying the location or locations, and the terms and conditions of such land application, marketing or distribution. The permit application shall not be complete unless it includes the landowner's written consent to apply sewage sludge on his property.

4. The land disposal of lime-stabilized septage and unstabilized septage is prohibited.

5. Beginning July 1, 2007, no application for a permit or variance to authorize the storage of sewage sludge shall be complete unless it contains certification from the governing body of the locality in which the sewage sludge is to be stored that the storage site is consistent with all applicable ordinances. The governing body shall confirm or deny consistency within 30 days of receiving a request for certification. If the governing body does not so respond, the site shall be deemed consistent.

B. The Board, with the assistance of the Department of Conservation and Recreation and the Department of Health, shall adopt regulations to ensure that (i) sewage sludge permitted for land application, marketing, or distribution is properly treated or stabilized; (ii) land application, marketing, and distribution of sewage sludge is performed in a manner that will protect public health and the environment; and (iii) the escape, flow or discharge of sewage sludge into state waters, in a manner that would cause pollution of state waters, as those terms are defined in § 62.1-44.3, shall be prevented.

C. Regulations adopted by the Board, with the assistance of the Department of Conservation and Recreation and the Department of Health pursuant to subsection B, shall include:

1. Requirements and procedures for the issuance and amendment of permits, including general permits, authorizing the land application, marketing or distribution of sewage sludge;

2. Procedures for amending land application permits to include additional application sites and sewage sludge types;

3. Standards for treatment or stabilization of sewage sludge prior to land application, marketing or distribution;

4. Requirements for determining the suitability of land application sites and facilities used in land application, marketing or distribution of sewage sludge;

5. Required procedures for land application, marketing, and distribution of sewage sludge;

6. Requirements for sampling, analysis, recordkeeping, and reporting in connection with land application, marketing, and distribution of sewage sludge;

7. Provisions for notification of local governing bodies to ensure compliance with §§ 62.1-44.15:3 and 62.1-44.19:3.4;

8. Requirements for site-specific nutrient management plans, which shall be developed by persons certified in accordance with § 10.1-104.2 prior to land application for all sites where sewage sludge is land applied, and approved by the Department of Conservation and Recreation prior to permit issuance

under specific conditions, including but not limited to, sites operated by an owner or lessee of a Confined Animal Feeding Operation, as defined in subsection A of § 62.1-44.17:1, or Confined Poultry Feeding Operation, as defined in § 62.1-44.17:1.1, sites where the permit authorizes land application more frequently than once every three years at greater than 50 percent of the annual agronomic rate, and other sites based on site-specific conditions that increase the risk that land application may adversely impact state waters;

9. Procedures for the prompt investigation and disposition of complaints concerning land application of sewage sludge, including the requirements that (i) holders of permits issued under this section shall report all complaints received by them to the Department and to the local governing body of the jurisdiction in which the complaint originates, and (ii) localities receiving complaints concerning land application of sewage sludge shall notify the Department and the permit holder. The Department shall maintain a searchable electronic database of complaints received during the current and preceding calendar year, which shall include information detailing each complaint and how it was resolved; ~~and~~

10. Procedures for receiving and responding to public comments on applications for permits and for permit amendments authorizing land application at additional sites. Such procedures shall provide that an application for any permit amendments to increase the acreage authorized by the initial permit by 50 percent or more shall be treated as a new application for purposes of public notice and public hearings; *and*

*11. Procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to account for increased intensity, frequency, and duration of storm events.*

D. Prior to issuance of a permit authorizing the land application, marketing or distribution of sewage sludge, the Department shall consult with, and give full consideration to the written recommendations of the Department of Health and the Department of Conservation and Recreation. Such consultation shall include any public health risks or water quality impacts associated with the permitted activity. The Department of Health and the Department of Conservation and Recreation may submit written comments on proposed permits within 30 days after notification by the Department.

E. Where, because of site-specific conditions, including soil type, identified during the permit application review process, the Department determines that special requirements are necessary to protect the environment or the health, safety or welfare of persons residing in the vicinity of a proposed land application site, the Department may incorporate in the permit at the time it is issued reasonable special conditions regarding buffering, transportation routes, slope, material source, methods of handling and application, and time of day restrictions exceeding those required by the regulations adopted under this section. Before incorporating any such conditions into the permit, the Department shall provide written notice to the permit applicant, specifying the reasons therefor and identifying the site-specific conditions justifying the additional requirements. The Department shall incorporate into the notice any written requests or recommendations concerning such site-specific conditions submitted by the local governing body where the land application is to take place. The permit applicant shall have at least 14 days in which to review and respond to the proposed conditions.

F. The Board shall adopt regulations prescribing a fee to be charged to all permit holders and persons applying for permits and permit modifications pursuant to this section. All fees collected pursuant to this subsection shall be deposited into the Sludge Management Fund. The fee for the initial issuance of a permit shall be \$5,000. The fee for the reissuance, amendment, or modification of a permit for an existing site shall not exceed \$1,000 and shall be charged only for permit actions initiated by the permit holder. Fees collected under this section shall be exempt from statewide indirect costs charged and collected by the Department of Accounts and shall not supplant or reduce the general fund appropriation to the Department.

G. There is hereby established in the treasury a special fund to be known as the Sludge Management Fund, hereinafter referred to as the Fund. The fees required by this section and by subsection E of § 62.1-44.16 shall be transmitted to the Comptroller to be deposited into the Fund. The income and principal of the Fund shall be used only and exclusively (i) for the Department's direct and indirect costs associated with the processing of an application to issue, reissue, amend, or modify any permit to land apply, distribute, or market sewage sludge or industrial wastes, the administration and management of the Department's sewage sludge and industrial wastes land application programs, including monitoring and inspecting, and the Department of Conservation and Recreation's costs for implementation of the sewage sludge application program and (ii) to reimburse localities with duly adopted ordinances providing for the testing and monitoring of the land application of sewage sludge or solid or semisolid industrial wastes. The State Treasurer shall be the custodian of the moneys deposited in the Fund. No part of the Fund, either principal or interest earned thereon, shall revert to the general fund of the state treasury.

H. All persons holding or applying for a permit authorizing the land application of sewage sludge shall provide to the Board written evidence of financial responsibility, which shall be available to pay claims for cleanup costs, personal injury, and property damages resulting from the transportation, storage

or land application of sewage sludge. The Board shall, by regulation, establish and prescribe mechanisms for meeting the financial responsibility requirements of this section.

I. Any county, city or town may adopt an ordinance that provides for the testing and monitoring of the land application of sewage sludge within its political boundaries to ensure compliance with applicable laws and regulations.

J. The Department, upon the timely request of any individual to test the sewage sludge at a specific site, shall collect samples of the sewage sludge at the site prior to the land application and submit such samples to a laboratory. The testing shall include an analysis of the (i) concentration of trace elements, (ii) coliform count, and (iii) pH level. The results of the laboratory analysis shall be (a) furnished to the individual requesting that the test be conducted and (b) reviewed by the Department. The person requesting the test and analysis of the sewage sludge shall pay the costs of sampling, testing, and analysis.

K. At least 100 days prior to commencing land application of sewage sludge at a permitted site, the permit holder shall deliver or cause to be delivered written notification to the chief executive officer or his designee for the local government where the site is located. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site. This requirement may be satisfied by providing a list of all available permitted sites in the locality at least 100 days prior to commencing the application at any site on the list. This requirement shall not apply to any application commenced prior to October 10, 2005. If the site is located in more than one county, the notice shall be provided to all jurisdictions where the site is located.

L. The permit holder shall deliver or cause to be delivered written notification to the Department at least 14 days prior to commencing land application of sewage sludge at a permitted site. The notice shall identify the location of the permitted site and the expected sources of the sewage sludge to be applied to the site.

M. The Department shall randomly conduct unannounced site inspections while land application of sewage sludge is in progress at a sufficient frequency to determine compliance with the requirements of this section, § 62.1-44.19:3.1, or regulations adopted under those sections.

N. Surface incorporation into the soil of sewage sludge applied to cropland may be required when practicable and compatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service.

O. The Board shall develop regulations specifying and providing for extended buffers to be employed for application of sewage sludge (i) to hay, pasture, and forestlands; or (ii) to croplands where surface incorporation is not practicable or is incompatible with a soil conservation plan meeting the standards and specifications of the U.S. Department of Agriculture Natural Resources Conservation Service. Such extended buffers may be included by the Department as site specific permit conditions pursuant to subsection E, as an alternative to surface incorporation when necessary to protect odor sensitive receptors as determined by the Department or the local monitor.

P. The Board shall adopt regulations requiring the payment of a fee for the land application of sewage sludge, pursuant to permits issued under this section. The person land applying sewage sludge shall (i) provide advance notice of the estimated fee to the generator of the sewage sludge unless notification is waived, (ii) collect the fee from the generator, and (iii) remit the fee to the Department as provided for by regulation. The fee shall be imposed on each dry ton of sewage sludge that is land applied in the Commonwealth. The regulations shall include requirements and procedures for:

1. Collection of fees by the Department;
2. Deposit of the fees into the Fund; and
3. Disbursement of proceeds by the Department pursuant to subsection G.

Q. The Department, in consultation with the Department of Health, the Department of Conservation and Recreation, the Department of Agriculture and Consumer Services, and the Virginia Cooperative Extension Service, shall establish and implement a program to train persons employed by those local governments that have adopted ordinances, pursuant to this section, to test and monitor the land application of sewage sludge. The program shall include, at a minimum, instruction in: (i) the provisions of the Virginia Biosolids Use Regulations; (ii) land application methods and equipment, including methods and processes for preparation and stabilization of sewage sludge that is land applied; (iii) sampling and chain of custody control; (iv) preparation and implementation of nutrient management plans for land application sites; (v) complaint response and preparation of complaint and inspection reports; (vi) enforcement authority and procedures; (vii) interaction and communication with the public; and (viii) preparation of applications for reimbursement of local monitoring costs disbursed pursuant to subsection G. To the extent feasible, the program shall emphasize in-field instruction and practical training. Persons employed by local governments shall successfully complete such training before the local government may request reimbursement from the Board for testing and monitoring of land application of sewage sludge performed by the person. The completion of training shall not be a prerequisite to the exercise of authority granted to local governments by any applicable provision of law.

The Department may:

1. Charge attendees a reasonable fee to recover the actual costs of preparing course materials and

providing facilities and instructors for the program. The fee shall be reimbursable from the Fund established pursuant to this section; and

2. Request and accept the assistance and participation of other state agencies and institutions in preparing and presenting the course of training established by this subsection.

R. Localities, as part of their zoning ordinances, may designate or reasonably restrict the storage of sewage sludge based on criteria directly related to the public health, safety, and welfare of its citizens and the environment. Notwithstanding any contrary provision of law, a locality may by ordinance require that a special exception or a special use permit be obtained to begin the storage of sewage sludge on any property in its jurisdiction, including any area that is zoned as an agricultural district or classification. Such ordinances shall not restrict the storage of sewage sludge on a farm as long as such sludge is being stored (i) solely for land application on that farm and (ii) for a period no longer than 45 days. No person shall apply to the State Health Commissioner or the Department of Environmental Quality for a permit, a variance, or a permit modification authorizing such storage without first complying with all requirements adopted pursuant to this subsection.

**2. That the State Water Control Board shall update the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) in accordance with this act.**

**3. That prior to the State Water Control Board (the Board) adopting regulations as required by this act, the Department of Environmental Quality (the Department) shall form a regulatory advisory panel consisting of representatives from the Virginia Biosolids Council, Virginia Association of Municipal Wastewater Agencies, Chesapeake Bay Foundation, James River Association, and any other relevant organization that the Department deems necessary for the purpose of assisting the Board in developing the regulations as required by this act.**



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### Final Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC25-32
<b>VAC Chapter title(s)</b>	<b>Virginia Pollution Abatement (VPA) Permit Regulation</b>
<b>Action title</b>	Implementation of Chapter 209 of the 2024 Acts of Assembly (HB 870)
<b>Date this document prepared</b>	February 23, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.*

The Virginia Pollution Abatement (VPA) Permit Regulation, 9VAC25-32, prescribes conditions for the proper treatment, stabilization, storage, and use of biosolids (treated sewage sludge), that are or will be land applied, marketed, and distributed in Virginia. Chapter 209 of the 2024 Acts of Assembly (HB 870) amended § 62.1-44.19:3 of the Code of Virginia by adding a requirement for the State Water Control Board (Board) to include in its regulations for biosolids that are permitted for land application, marketing, or distribution: "Procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to account for increased intensity, frequency, and duration of storm events."

This regulatory action will establish standards for additional on-site and alternative storage site requirements the regulated community may choose to include in their permits to address situations when routine and on-site storage facility capacity and holding times are anticipated to be exceeded due to extended periods of precipitation. The standards will account for increased intensity, frequency, and duration of storm events and continue to protect against the release of biosolids into state waters by allowing permit holders to develop and include an emergency management plan, which must be approved by the Department of Environmental Quality (DEQ), in the biosolids management plan required by 9VAC25-32-410.

**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.*

- 
- Board: State Water Control Board
  - Biosolids: a sewage sludge that has received an established treatment and is managed in a manner to meet the required pathogen control and vector attraction reduction, and contains concentrations of regulated pollutants below the ceiling limits established in 40 CFR Part 503 and 9VAC25-32-356, such that it meets the standards established for use of biosolids for land application, marketing, or distribution in accordance with the VPA Permit Regulation. (9VAC25-32-10).
  - CFR: Code of Federal Regulations
  - DEQ: Department of Environmental Quality
  - HB: House Bill
  - NOIRA: Notice of Intended Regulatory Action
  - Sewage sludge: any solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes, but is not limited to, domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works. (9VAC25-32-10).
  - O&M manual: Operations and Maintenance manual
  - VAC: Virginia Administrative Code
  - VAMWA: Virginia Association of Municipal Wastewater Agencies
  - VBC: Virginia Biosolids Council
  - VPA: Virginia Pollution Abatement
  - VPDES: Virginia Pollutant Discharge Elimination System

**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) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."*

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On April 7, 2026, the State Water Control Board adopted the final amendments to the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32 et seq.).

### Mandate and Impetus

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding the mandate for this regulatory change, and any other impetus that specifically prompted its initiation. If there are no changes to previously reported information, include a specific statement to that effect.*

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There are no changes to previously reported information. The mandate for this regulatory change is Chapter 209 of the 2024 Virginia Acts of Assembly (HB 870), approved March 28, 2024, which amended and reenacted § 62.1-44.19:3 of the Code of Virginia by adding a requirement for the Board to include in its regulations for biosolids that are permitted for land application, marketing, or distribution: “Procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to account for increased intensity, frequency, and duration of storm events.”

### Legal Basis

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

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The basis for this regulation is Articles 2, 3, 4 and 5 of the State Water Control Law (Chapter 3.1 of Title 62.1 of the Code of Virginia, §§ 62.1-44.2 et seq.). Specifically, § 62.1-44.15 (5) authorizes the Board to issue, revoke, or amend certificates and certificates and land-disturbing permits under prescribed conditions for the discharge of treated sewage, stormwater, industrial wastes and other waste into or adjacent to state waters and § 62.1-44.15 (7) authorizes the Board to adopt rules governing the procedures of the Board with respect to the issuance of permits. Further, § 62.1-44.15 (10) authorizes the Board to adopt such regulations as it deems necessary to enforce the general water quality management program and §62.1-44.15 (14) authorizes the Board to establish requirements for the treatment of sewage, industrial wastes and other wastes. § 62.1-44.16 specifies the Board's authority to regulate discharges of industrial wastes; § 62.1-44.19:3 requires the Board to include in regulation certain requirements pertaining to the land application of biosolids; § 62.1-44.20 provides that agents of the Board may have the right of entry to public or private property for the purpose of obtaining information or conducting necessary surveys or investigations; and § 62.1-44.21 authorizes the Board to require owners to furnish information necessary to determine the effect of the wastes from a discharge on the quality of state waters.

**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 is intended to solve.*

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Chapter 209 of the 2024 Acts of Assembly (HB 870) amended § 62.1-44.19:3 of the Code of Virginia by adding a requirement for the State Water Control Board (Board) to include in its regulations for biosolids that are permitted for land application, marketing, or distribution: “Procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to account for increased intensity, frequency, and duration of storm events.”

Extended periods of precipitation affect the timing of land-application of biosolids. During 2018-2019, a record-year for precipitation in some parts of the Commonwealth, many biosolids storage facilities reached or exceeded their capacity because biosolids could not be applied on saturated ground or ground with standing water. This regulatory action is needed to establish procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements for biosolids when extreme weather conditions, over an extended period of time, affect routine and on-site storage facility capacity and holding times. Establishing regulatory requirements helps to prevent and protect against the release of biosolids into state waters and accounts for increased intensity, frequency, and duration of storm events.

**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.*

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Some wastewater treatment plants have short-term storage at their facilities for biosolids, and land application contractors employ various storage options for biosolids to allow for land application during optimal times for nutrient application and uptake and to have sufficient capacity for periods when land application is limited due to typical weather conditions. This regulatory amendment will establish procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded due to increased intensity, frequency, and duration of storm events.

During 2018-2019, a record-year for precipitation in some parts of the Commonwealth, many biosolids storage facilities reached or exceeded their capacity. At the time, owners of those facilities applied to DEQ on a case-by-case basis for variances to their permits to store and manage biosolids that could not be land-applied or stored in the usual manner. Processing variances does not provide a timely solution for acute weather-related storage issues. DEQ also has the option to exercise enforcement discretion based on weather related circumstances and where non-compliance would pose minimal risk to the environment and human health. DEQ could initiate enforcement action where non-compliance with storage requirements would result in a discharge to state waters. However, neither variances nor enforcement discretion provide regulatory certainty for the permit holders or the public.

The amendments to the VPA Permit Regulation will provide permit holders regulatory certainty by allowing them to plan in advance for alternative storage and handling solutions when extreme weather conditions result in long periods of time when biosolids cannot be land-applied. This advanced planning is

accomplished through the development and approval of an emergency management plan that 1) summarizes existing biosolids storage capacity, 2) describes procedures and thresholds for initiating the plan, 3) describes recordkeeping and reporting procedures, and 4) describes procedures for concluding implementation of an emergency management plan. The plan may also identify additional biosolids storage sites that may only be used during an emergency, allowable deviations from onsite storage requirements, sign posting requirements, and operational procedures. The permit holder would submit the plan for approval by DEQ and would only initiate the plan if the thresholds for constituting a storage emergency were met. The permit holder would be required to conclude implementation of the plan when the conditions causing limitations to land application cease.

This regulatory action provides an option for permit holders that will protect human health and the environment while providing more flexibility with storage and land application when the amount of biosolids exceeds normal storage facility capacity. It will also reduce or eliminate the need to apply for a variance from the regulation and allow the permit holder to have an approved alternative that can be quickly implemented in the event acute weather-related storage issues arise.

**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 is improved readiness for severe weather events by entities that have permits allowing land application of biosolids, reducing the risk of discharges from inadequately stored biosolids, and thus improved protection of human health and the environment. Permit holders will also benefit from improved operational continuity and additional regulatory certainty during periods when weather conditions pose challenges to routine biosolids management practices.

Disadvantages to the public may include reduced scope of notification for pending land application activities if the permit holder chooses to cite reductions in the amount of time required for 5-day land application notice signs to be placed.

The primary advantage to DEQ and the Commonwealth is reduced time spent on handling case-by-case issues of potential non-compliance and instead working with permit holders to pre-plan for weather emergencies through submittal of emergency management plans. There is a disadvantage in the staff time necessary to review plans; however, this is offset by the value of timely emergency preparedness.

**Requirements More Restrictive than Federal**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any requirement of the regulatory change which is more restrictive than applicable federal requirements. If there are no changes to previously reported information, include a specific statement to that effect.*

There are no changes to previously reported information. There are no requirements that exceed applicable federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*List all changes to the information reported on the Agency Background Document submitted for the previous stage regarding any other state agencies, localities, or other entities that are particularly affected by the regulatory change. If there are no changes to previously reported information, include a specific statement to that effect.*

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**Other State Agencies Particularly Affected**

There are no changes to previously reported information. There are no state agencies particularly affected by the proposed regulation as the regulation applies statewide and does not alter existing permitting requirements for biosolids land applications.

**Localities Particularly Affected**

There are no changes to previously reported information. There are no localities particularly affected by the proposed regulation as the regulation applies statewide and does not alter existing permitting requirements for biosolids land applications.

**Other Entities Particularly Affected**

There are no changes to previously reported information. There are no other entities particularly affected by the proposed regulation as the regulation applies statewide and does not alter existing permitting requirements for biosolids land applications.

**Public Comment**

*Summarize all comments received during the public comment period following the publication of the previous stage, and provide the agency's response. Include all comments submitted: including those received on Town Hall, in a public hearing, or submitted directly to the agency. If no comment was received, enter a specific statement to that effect.*

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<b>Commenter</b>	<b>Comment</b>	<b>Agency response</b>
anonymous	Please stop building data centers because they use up our water. Pollution from solar farms is a problem too.	Thank you for submitting a comment. The comment is not relevant to this regulatory action.

Commenter	Comment	Agency response
<p>Les Foldesi, MS, CHP Emeritus</p>	<p>Consider the presence of radionuclides in biosolids. There are municipal waste treatment facilities particularly in the District of Columbia (DC) that have no holding capacity, i.e., biosolids are transported off site the same day that they are produced. There are several major medical facilities in DC performing numerous nuclear medicine procedures and research using radioisotopes. These materials may legitimately be discharged to the sanitary sewer. Although most of these radioisotopes have short half lives of hours or a few days, they are nevertheless detectable for a week or so. Most municipal facilities can hold material for 30 days or more. Usually the biosolids are disposed on agriculture fields; however, if it is raining or the fields are muddy, the biosolids go to the landfill. Some landfills have radiation monitoring systems to prevent illegal dumping or radioactive sources. So some effort may be required to resolve the situation.</p>	<p>Thank you for submitting a comment. The requested action is beyond the scope of this regulatory action.</p>
<p>Susan Trumbo, Recyc Systems, Inc</p>	<p>I have been involved in some way with land application of biosolids over thirty-five years. Consequently, I have more experience than most with the biosolids management program. The Fall of 2018 through Spring of 2019 was the most difficult months I have ever experienced due to record precipitation throughout Virginia and the Mid-Atlantic Region. That we were able to manage through this period without any impact on water quality and the environment or impact on operations of sewer plants is testimony to the diligence of the utility professionals.</p> <p>I urge approval and adoption of these regulations which will provide the ability to create a plan to manage biosolids when extreme weather prevents the conforming management of biosolids. Management of biosolids is a task which must be provided regardless of weather, pandemics or other emergencies. These regulations will allow the permittees to be proactive in developing and obtaining VADEQ approval of an emergency plan for extreme conditions.</p> <p>I offer the following specific comment on the draft regulations:</p> <p>Section F.3. Procedural deviations specified in the emergency management plan may not include additional deviations from permit requirements other than those listed in subdivisions F2a through F2d of this section.</p> <p>I object to this restriction as it is shortsighted and creates an unnecessary limitation without providing any benefit. What if other viable deviations are</p>	<p>Thank you for submitting a comment and your overall support for the regulatory action. The amendments to 9VAC25-32-410 and 9VAC25-32-550 address the requirements established in Chapter 209 of the 2024 Acts of Assembly, which directed the Board to include in its regulations procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded.</p> <p>The specific procedural deviations identified in the noted subdivisions 9VAC25-32-410 F 2 a through d. match the scope of the legislation, and are those identified and vetted by the Regulatory Advisory Panel for inclusion in the regulatory amendments. Unique deviations could be processed through the modification or reissuance of a permit using the variance</p>

Commenter	Comment	Agency response
	<p>developed after adoption of these regulations?                      What purpose is there in limiting deviations to those listed in F2a through F2d? The Emergency Management Plan must be preapproved by VADEQ thus giving VADEQ more than sufficient opportunity to approve the proposed deviation.</p> <p>Thank you for your consideration.</p>	<p>process identified at <a href="#">9VAC25-32-330</a>. No change was made to the regulatory text in response to this comment.</p>
<p>Mike Gerel,                      Chesapeake Bay Foundation</p>	<p>A letter of support for the regulation noting it "establishes reasonable standards" and "offers an appropriate means to manage biosolids in the context of more extreme weather in a manner that assures protection of state waters." No changes are requested.</p>	<p>DEQ acknowledges the support for the regulatory amendments.</p>
<p>Tim Mitchell,                      President.                      Virginia Association of Municipal Wastewater Agencies (VAMWA)</p>	<p>Letter expressing "overall, pleased with the Regulation as proposed," but requested 3 issues be addressed:</p> <p>1. The [Proposed Regulation Agency Background Document TH-02 7/31/2025] Imprecisely Suggests That POTWs "Typically" Have Several Months' Biosolids Storage Capacity</p> <p>The [TH-02] states: "Typically, wastewater treatment facilities and permitted biosolids land appliers have sufficient capacity to store biosolids for several months, allowing end-users to land-apply during optimal times for nutrient application and uptake; however, extended periods of precipitation affect the timing of land application."</p> <p>Based on VAMWA's expertise, this [TH-02] language is inaccurate. To the contrary, based on their footprint and layout, it is often difficult for POTWs to accommodate storage space for several months' biosolids. Beyond semantics, this inaccuracy is counter to the unquestioned need for the 2024 Law and the Regulation and could thus cause undue confusion in the Regulation's interpretation and application.</p>	<p>Thank you for submitting a comment and your overall support for the regulatory action.</p> <p>1. DEQ acknowledges that the storage capacity located at wastewater treatment facilities is typically much less than the storage capacity located at routine storage sites permitted for use by biosolids land appliers, and that the regulatory amendments seek relief from extraordinary cases when existing storage capacity may be exceeded. This language was used in the Town Hall documents for the regulatory action, not in the text of the regulatory amendments.</p> <p>DEQ addressed this comment by revising the "Substance" section of this final Town Hall agency background document (TH-03).</p> <p>No change was made to the regulatory text in response to this comment.</p>

Commenter	Comment	Agency response
<p>Tim Mitchell, President. Virginia Association of Municipal Wastewater Agencies (VAMWA)</p>	<p>2. The [Department of Planning and Budget Economic Impact Analysis 9/30/2025] states: “According to DEQ, localities, as part of their zoning ordinances, may designate or reasonably restrict the storage of biosolids based on criteria directly related to the public health, safety, and welfare of its citizens and the environment. (§ 62.1-44.19:3 of the Code of Virginia). The current limitations for onsite storage are intended to create a threshold below which storage would not be subject to a local ordinance. If onsite storage during a weather emergency were to extend beyond 45 days, or if stored material were to be land applied on farms other than where the on-site storage facility was located, the applicability of a local ordinance may come into play. However, the proposal does not directly introduce costs for localities.”</p> <p>VAMWA supports locality involvement as ensured by the Regulation as proposed, e.g., localities would be notified of emergency storage sites upon emergency plan approval pursuant to 9VAC25-32-550(F)(1). But the General Assembly’s prioritization of “protecting against the release of sewage sludge into state waters” during extreme weather conditions added to Va. Code § 62.1-44.19:3 as subsection (C)(11) by the 2024 Law supersedes localities’ preexisting subsection (R) general authority to “reasonably restrict the storage of sewage sludge based on criteria directly related to the public health, safety, and welfare of its citizens and the environment.” Restated, and despite subsection (R)’s “notwithstanding any contrary provision of law” provision, the General Assembly preempted any locality subsection (R) determination by setting forth that, preventing sewage sludge from entering state waters during a weather-caused emergency as addressed in the Regulation is of paramount concern for public health, safety, and welfare of citizens and the environment. The preamble should be revised to avoid any confusion that could lead a locality to impede the clear purpose of the 2024 Law and the Regulation.</p>	<p>2. DEQ intends to implement the provisions of the regulatory amendments related to onsite storage as described in 9VAC25-32-410 F 2 b.</p> <p>DEQ makes no assertions regarding the authority of a locality to regulate on-site storage during the implementation of an emergency management plan as described in the regulatory amendments.</p> <p>No change was made to the regulatory text in response to this comment.</p>

Commenter	Comment	Agency response
<p>Tim Mitchell, President. Virginia Association of Municipal Wastewater Agencies (VAMWA)</p>	<p>3. The Regulation Should Clarify That Generators May Submit Emergency Management Plans</p> <p>Of our three recommendations, this recommendation will lead to the largest tangible improvement. The Regulation, perhaps unintentionally, does not expressly accommodate generator emergency management plans. By ensuring that generators can move biosolids to their own emergency storage sites, the Regulation can substantially further reduce the risk of [sewage] sludge entering state waters. [...] VAMWA suggests that the Regulation be clarified so that generators may directly avail themselves of their own available emergency storage sites and transport capabilities without relying on contracted land appliers.</p>	<p>3. The second enactment clause of Chapter 209 of the 2024 Acts of Assembly states that "the State Water Control Board shall update the Virginia Pollution Abatement (VPA) Permit Regulation (9VAC25-32) in accordance with this act." The requested amendments would apply to permits issued under the Virginia Pollutant Discharge Elimination System (VPDES) Permit Regulation, 9VAC25-31, to generators of biosolids which is beyond the scope of Chapter 209 of the 2024 Acts of Assembly.</p> <p>As discussed during the Regulatory Advisory Panel meetings for this regulatory action, the existing administrative procedures for modifying the sludge management plan for a facility with a VPDES permit (9VAC25-31) can be used to identify and initiate emergency biosolids management procedures.</p> <p>No changes were made to the regulatory text in response to this comment.</p>

Committer	Comment	Agency response
Kendra Sveum President, Virginia Biosolids Council (VBC)	<p>VBC requests DEQ acknowledge variability in biosolids generation rates and provide flexibility in how emergency plans may be updated to reflect evolving conditions.</p> <p>VBC also requested an extended notice period of 60 days for updating the Department with any changes in the Emergency Management Plan Notice.</p>	<p>Thank you for submitting a comment.</p> <p>9VAC25-32-410 F 7 requires the emergency management plan be kept current.</p> <p>In order to address flexibility for updates in biosolids management, DEQ added a sentence specifying that “changes in the information required by subdivisions F 1 a through F 1 c of this section do not require department approval.” New emergency storage sites or procedural changes would still require DEQ approval prior to initiation of an emergency management plan.</p> <p>In response to this comment, DEQ changed the time period to submit changes in the emergency management plan to DEQ from 30 days to 90 days, which is consistent with the time period specified in existing VPA permits to submit changes in Operations and Maintenance plans to DEQ.</p>

**Detail of Changes Made Since the Previous Stage**

List all changes made to the text since the previous stage was published in the Virginia Register of Regulations and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

<b>Current chapter-section number</b>	<b>New chapter-section number, if applicable</b>	<b>New requirement from previous stage</b>	<b>Updated new requirement since previous stage</b>	<b>Change, intent, rationale, and likely impact of updated requirements</b>
9VAC25-32-410	This action adds subsection F, Emergency Management Plan.	Subsection F establishes requirements for an emergency management plan. The emergency management plan is optional and may be included in the permit holder's biosolids management plan.	Changes were made to use consistent terminology throughout subsection F to clarify when an emergency management plan requires approval and to differentiate between plan initiation and plan implementation.	Use of consistent terms improves clarity of requirements and improves readability and understanding of the requirements.
9VAC25-32-410	9VAC25-32-410.F.6	Subsection F.6 establishes which type of changes require department approval.	Changes in the information required by subdivisions F.1.a through F.1.c of this section do not require department approval. Changes to procedures or the addition of emergency storage sites shall be approved by the department prior to initiation of a revised emergency management plan.	The updated requirement adds clarifying language explaining which type of changes would require department approval.

9VAC25-32-410		Subsection F 6 establishes time requirements for submitting changes to the Department when there are changes in biosolids management.	The emergency management plan shall be kept current and submitted to the Department within 90 days of changes in biosolids management.	DEQ extended the time period to submit changes in the emergency management plan to 90 days, which is consistent with the time period specified in existing VPA permits to submit changes in Operations and Maintenance plans.
9VAC25-32-550 F		Subsection 550 F establishes the ability to add department-approved emergency storage sites to an emergency management plan during a permit term.	Emergency storage sites may be added to an emergency management plan at any point during the permit term with the approval of the department.	The updated requirement adds clarifying language explaining emergency sites may be added to a plan any point during the permit term following procedures in 9VAC25-32-410.
9VAC25-32-410 F 4	9VAC25-32-410 F 6			Section was moved from subsection F 4 to F 6 to improved understanding and better align sequencing
9VAC25-32-410 F 6	9VAC25-32-410 F 4			Section was moved from subsection F 6 to F 4 to improve understanding and better align sequencing
9VAC25-32-410 F 7	9VAC25-32-410 F 4 f	Subsection F 4 f establishes the conclusion of an emergency management plan.	Emergency management plan implementation shall conclude when the conditions causing limitations to land application cease.	410 F 7 was incorporated into 410 F 4 f for improved clarity and understanding.

**Detail of All Changes Proposed in this Regulatory Action**

List all changes proposed in this action and the rationale for the changes. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. \* Put an asterisk next to any substantive changes.

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of updated requirements
9VAC25-32-410	F. Emergency Management Plan	None	<p>This regulatory action allows permittees to submit an emergency management plan as part of their biosolids management plan and sets out the requirements for the plan, these requirements include:</p> <ul style="list-style-type: none"> <li>• Essential components of the plan</li> <li>• Procedures for deviating from permit requirements during an emergency</li> <li>• Requirements to keep the plan current</li> <li>• Plan initiation procedures and</li> <li>• Approval, implementation, and conclusion of plan implementation procedures</li> </ul> <p>This action increases opportunities for permittees to plan for emergencies and communicate the plan with DEQ by offering permittees the option to add an emergency management plan to their biosolids management plan. This gives permittees the ability to address administrative, staging, signage, and additional on-site and emergency storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded due to storm events. In response to a comment, DEQ revised the time period to submit changes in the emergency management plan to DEQ from 30 to 90 days, which is consistent with the time period specified in existing VPA permits to submit changes in Operations and Maintenance plans.</p>

9VAC25-32-550	F. Emergency Storage	None	This section describes the requirements for the emergency storage site including approval, notifications and reporting. This pre-planning process provides certainty to the regulated community and the public concerning how emergency storage of biosolids will be conducted in response to extreme weather events.
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Minor changes were made to use consistent terminology throughout Section 410 and 550. These changes improve clarity of requirements and improve the readability and understanding of the requirements. The content of the proposed subsections in 9VAC25-410 F 4 – F 7 were revised to group similar requirements and improve chronological alignment.

2 State Water Control Board

3 Implementation of Chapter 209 of the 2024 Acts of Assembly (HB870)

4 9VAC25-32-410. Biosolids management plan.

5 A. The permit holder shall maintain and implement a Biosolids Management Plan that shall  
6 consist of three components:

- 7 1. The materials, including site booklets, developed and submitted at the time of permit  
8 application or permit modification adding a farm to the permit in accordance with 9VAC25-  
9 32-60 F;
- 10 2. Nutrient management plan developed for each site, prior to biosolids application; and
- 11 3. Operations and maintenance (O&M) manual, developed and submitted to the  
12 department within 90 days of the effective date of the permit.

13 B. ~~The biosolids management plan and all of its components shall be incorporated as an~~  
14 ~~enforceable part of~~ may also include an emergency management plan, developed and submitted  
15 to the department for approval at any point during the permit term. The requirements for an  
16 emergency management plan are set out in subsection F of this section.

17 C. The biosolids management plan and all of its components shall be incorporated as an  
18 enforceable part of the permit.

19 D. Nutrient management plan:;

20 1. A nutrient management plan approved by the Department of Conservation and  
21 Recreation shall be required for application sites prior to department authorization under  
22 specific conditions, including ~~but not limited to~~:

- 23 a. Sites operated by an owner or lessee of a confined animal feeding operation as  
24 defined in subsection A of § 62.1-44.17:1 of the Code of Virginia, or confined poultry  
25 feeding operation as defined in subsection A of § 62.1-44.17:1.1 of the Code of  
26 Virginia;
- 27 b. Sites where land application more frequently than once every three years at greater  
28 than 50% of the annual agronomic rate is proposed;
- 29 c. Mined or disturbed land sites where land application is proposed at greater than  
30 agronomic rates; and
- 31 d. Other sites based on site-specific conditions that increase the risk that land  
32 application may adversely impact state waters.

33 2. Where conditions at the land application site change so that it meets one or more of the  
34 specific conditions identified in subdivisions 1 a through d of this subsection, an approved  
35 nutrient management plan shall be submitted prior to any future land application at the  
36 site.

37 3. The nutrient management plan shall be available for review by the department at the  
38 land application site during biosolids land application.

39 4. Within 30 days after land application at the site has commenced, the permit holder shall  
40 provide a copy of the nutrient management plan to the farm operator of the site, the  
41 Department of Conservation and Recreation and the chief executive officer or designee  
42 for the local government unless they request in writing not to receive the nutrient  
43 management plan.

44 5. The nutrient management plan must be approved by the Department of Conservation  
 45 and Recreation prior to land application for application sites where the soil test phosphorus  
 46 levels exceed the values in Table 1 of this section. For purposes of approval, permittees  
 47 should submit the nutrient management plan to the Department of Conservation and  
 48 Recreation at least 30 days prior to the anticipated date of land application to ensure  
 49 adequate time for the approval process.

TABLE 1 SOIL PHOSPHORUS LEVELS REQUIRING NMP APPROVAL	
Region	Soil Test P (ppm) VPI & SU Test (Mehlich I)*
Eastern Shore and Lower Coastal Plain	135
Middle and Upper Coastal Plain and Piedmont	136
Ridge and Valley	162
*If results are from another laboratory, the Department of Conservation and Recreation approved conversion factors must be used.	

- 50 ~~D.~~ E. The O&M manual shall include, at a minimum:
- 51 1. Equipment maintenance and calibration procedures and schedules;
  - 52 2. Storage facility maintenance procedures and schedules;
  - 53 3. Sampling schedules for:
    - 54 a. Required monitoring; and
    - 55 b. Operational control testing;
  - 56 4. Sample collection, preservation, and analysis procedures, including laboratories and  
 57 methods used; and
  - 58 5. Instructions for recording and reporting of all monitoring activities.

59 F. Emergency management plan. The emergency management plan specifies the procedures  
 60 a permit holder will follow to address administrative, staging, signage, and additional onsite and  
 61 emergency storage site requirements when routine and onsite storage facility capacity and  
 62 holding times are anticipated to be exceeded. The purpose of the emergency management plan  
 63 is to protect against the release of biosolids into state waters and to account for increased  
 64 intensity, frequency, and duration of storm events.

- 65 1. The emergency management plan shall include the following:
  - 66 a. An outline of existing routine storage capacity, onsite storage capacity, storage at  
 67 generating facilities (as applicable), and any other storage capacity authorized and  
 68 available to the permit holder;
  - 69 b. Documentation of total volume of biosolids contracted or expected to be land applied  
 70 annually;
  - 71 c. Based on the information provided in subdivisions F 1 a and F 1 b of this section, a  
 72 calculation of the estimated total number of days of storage available annually;
  - 73 d. Procedures and thresholds for [ ~~requesting the initiation of initiating~~ ] the emergency  
 74 management plan;

- 75 e. Recordkeeping and reporting procedures when an emergency management  
76 plan [ ~~is active~~ has been implemented ]; and  
77 f. Procedures for concluding emergency management plan implementation.
- 78 2. The emergency management plan shall also include at least one of the following  
79 procedures:
- 80 a. Emergency storage [ ~~locations~~ sites ] that the permit holder may only use after the  
81 emergency management plan is initiated in accordance with 9VAC25-32-550 F;  
82 b. Planned deviations from onsite storage requirements specified in the biosolids  
83 management plan, including:  
84 (1) The application of biosolids at permitted sites other than those under the  
85 operational control of the same owner or operator of the site where the onsite storage  
86 is located as specified in 9VAC25-32-550 D;  
87 (2) The amount of biosolids stored as specified in 9VAC25-32-550 D 3; or  
88 (3) The storage time limitations as specified in 9VAC25-32-550 D;  
89 c. Planned deviations from or reduction of sign posting requirements specified in  
90 9VAC25-32-515 B; or  
91 d. Planned deviations from procedures specified in the O&M manual.
- 92 3. Procedural deviations specified in the emergency management plan may not include  
93 additional deviations from permit requirements other than those listed in subdivisions F 2  
94 a through F 2 d of this section.
- 95 4. [ ~~The emergency management plan shall be kept current and updated within 30 days~~  
96 ~~of changes in available storage sites or volume of biosolids managed. Changes to~~  
97 ~~procedures or the addition of emergency storage sites shall be approved by the~~  
98 ~~department prior to implementation. Approval, initiation, and implementation procedures.~~
- 99 a. A permit holder shall submit the emergency management plan to the department  
100 for approval and may not initiate implementation of the emergency management plan  
101 until it has been approved.
- 102 b. A permit holder may initiate implementation of the approved emergency  
103 management plan when the thresholds specified in the emergency management plan  
104 have been met.
- 105 c. Upon initiation of the emergency management plan, the permit holder shall notify  
106 the department in writing and follow the procedures described in the plan.
- 107 d. The implementation phase of an emergency management plan begins upon  
108 initiation and ends when the conditions causing limitations to land application cease.
- 109 e. During months in which an emergency management plan is being implemented, a  
110 permit holder shall include an addendum to monthly reports required by the permit that  
111 includes the following:  
112 (1) Date the permit holder initiated the emergency management plan;  
113 (2) A description of the deviations from the permit and O&M manual authorized by the  
114 emergency management plan that have been implemented;  
115 (3) A description of efforts to phase out emergency management plan implementation,  
116 which may include emptying emergency storage, bringing onsite storage back into  
117 compliance with permit requirements, and other reductions in emergency procedures;  
118 (4) An inventory for each storage location to include:  
119 (a) Dates and amounts of each biosolids source placed and removed; and  
120 (b) Destination permit and field identification for each biosolids source removed;

121 (5) Any conditions or activities that deviated from the approved emergency  
122 management plan;

123 (6) Changes in availability of landfill disposal; and

124 (7) Date the permit holder concluded implementation of the emergency management  
125 plan, when applicable.

126 f. The permit holder shall follow the procedures for concluding emergency  
127 management plan implementation as specified in the approved emergency  
128 management plan. Emergency management plan implementation shall conclude  
129 when the conditions causing limitations to land application cease. ]

130 5. [ ~~A request to initiate the emergency management plan~~ The notification required in  
131 subsection F 4 c of this section ] shall include:

132 a. A description of conditions causing limitations to land application that may include:

133 (1) Saturated land due to prolonged precipitation or flooding;

134 (2) Governor-issued emergency declarations related to the intensity, frequency, or  
135 duration of storm events;

136 (3) Measured, regional precipitation thresholds;

137 (4) Influx of additional biosolids to be managed due to the intensity, frequency, or  
138 duration of storm events; or

139 (5) Unreasonably burdensome geographic and transportation constraints.  
140 Unreasonably burdensome geographic and transportation constraints alone, without  
141 other conditions that are causing limitations to land application, are not sufficient cause  
142 to initiate an emergency management plan;

143 b. [ ~~Efforts~~ A description of efforts ] to utilize all available storage capacity, including  
144 the total capacity of storage available at the time of the [ ~~request to initiate~~ notification  
145 of the initiation of ] the emergency management plan;

146 c. Documentation that landfills are further limiting biosolids disposal and a description  
147 of landfill limitations at the time of the [ ~~request to initiate~~ the notification of initiation  
148 of ] emergency management plan; and

149 d. Any additional information determining whether cause exists for initiating the  
150 emergency management plan.

151 6. [ ~~Approval and implementation procedures.~~ The emergency management plan shall be  
152 kept current and submitted to the Department within 90 days of changes in the biosolids  
153 management plan. Changes in the information required by subdivisions F 1 a through F 1  
154 c of this section do not require department approval. Changes to procedures or the  
155 addition of emergency storage sites shall be approved by the department prior to initiation  
156 of a revised emergency management plan.

157 a. A permit holder shall submit the emergency management plan to the department  
158 for approval and may not initiate the emergency management plan until it has been  
159 approved.

160 b. A permit holder may initiate the approved emergency management plan when the  
161 thresholds specified in the emergency management plan have been met.

162 c. Upon initiation of the emergency management plan, the permit holder shall notify  
163 the department in writing and follow the procedures described in the plan.

164 d. The active phase of an emergency management plan begins upon initiation and  
165 ends when the conditions causing limitations to land application cease.

166 ~~e. During an active emergency management plan, a permit holder shall include an~~  
167 ~~addendum to monthly reports required by the permit that includes the following:~~  
168 ~~(1) Date the permit holder initiated the emergency management plan;~~  
169 ~~(2) A description of the deviations authorized in the emergency management plan from~~  
170 ~~permit requirements, and deviations in O&M manual procedures implemented;~~  
171 ~~(3) A description of efforts to phase out emergency management plan implementation,~~  
172 ~~which may include emptying emergency storage, bringing onsite storage back into~~  
173 ~~compliance with permit requirements, and other reductions in emergency procedures;~~  
174 ~~(4) An inventory for each storage location to include:~~  
175 ~~(a) Dates and amounts of each biosolids source placed and removed; and~~  
176 ~~(b) Destination permit and field identification for the sources removed;~~  
177 ~~(5) Any conditions or activities that deviated from the approved emergency~~  
178 ~~management plan;~~  
179 ~~(6) Changes in availability of landfill disposal; and~~  
180 ~~(7) Date the permit holder concluded the emergency management plan~~  
181 ~~implementation, when applicable.~~  
182 ~~f. The permit holder shall follow the procedures for concluding emergency~~  
183 ~~management plan implementation as specified in the approved emergency~~  
184 ~~management plan.~~  
185 ~~7. The active phase of the emergency management plan will conclude when the conditions~~  
186 ~~causing limitations to land application cease. ]~~

187 **9VAC25-32-550. Storage facilities.**

188 A. No person shall apply to the department for a permit, a variance, or a permit modification  
189 authorizing storage of biosolids without first complying with all requirements adopted pursuant to  
190 § 62.1-44.19:3 R of the Code of Virginia.

191 B. ~~Two~~ Three types of storage may be integrated into a complete biosolids management plan:

- 192 1. ~~On-site~~ Onsite storage, ~~or;~~
- 193 2. Routine storage. Only routine storage facilities shall be considered a facility under this  
194 regulation; and
- 195 3. Emergency storage.

196 C. All ~~on-site~~ onsite storage and routine storage facilities shall comply with the requirements  
197 of this section by 12 months from the effective date of this regulation.

198 D. ~~On-site~~ Onsite storage. ~~On-site~~ Onsite storage is the short-term storage of biosolids on a  
199 constructed surface within a site approved for land application at a location preapproved by the  
200 department. These stored biosolids shall be applied only to sites under the operational control of  
201 the same owner or operator of the site where the ~~on-site~~ onsite storage is located. Requirements  
202 for ~~on-site~~ onsite storage include the following:

- 203 1. The certified land applier shall notify the department within the same working day  
204 whenever it is necessary to implement ~~on-site~~ onsite storage. Notification shall include the  
205 source ~~or sources~~, location, and amounts;
- 206 2. A surface shall be constructed with sufficient strength to support operational equipment  
207 and with a maximum permeability of  $10^{-7}$  cm/sec;
- 208 3. Storage shall be limited to the amount of biosolids specified in the nutrient management  
209 plan to be applied at sites under the operational control of the same owner or operator of  
210 the site where the ~~on-site~~ onsite storage is located;

- 211 4. If malodors related to the stored biosolids are verified by the department at any occupied  
212 dwelling on surrounding property, the problem must be corrected within 48 hours. If the  
213 problem is not corrected within 48 hours, the biosolids must be removed from the storage  
214 site;
- 215 5. All biosolids stored on the ~~on-site~~ onsite storage pad shall be land applied by the 45<sup>th</sup>  
216 45th day from the first day of ~~on-site~~ onsite storage;
- 217 6. Biosolids storage shall be located to provide minimum visibility from adjacent properties;
- 218 7. Best management practices shall be utilized as appropriate to prevent contact with  
219 storm water run on or runoff;
- 220 8. Stored biosolids are to be inspected by the certified land applier at least every seven  
221 days and after precipitation events of 0.1 inches or greater to ensure that runoff controls  
222 are in good working order. Observed excessive slumping, erosion, or movement of  
223 biosolids is to be corrected within 24 hours. Any ponding or malodor at the storage site is  
224 to be corrected. The certified land applier shall maintain documentation of inspections of  
225 stored biosolids;
- 226 9. The department may prohibit or require additional restrictions for ~~on-site~~ onsite storage  
227 in areas of ~~Karst~~ karst topography and environmentally sensitive sites; and
- 228 10. Storage of biosolids shall be managed so as to prevent adverse impacts to water  
229 quality or public health.

230 E. Routine storage. Routine storage is the long-term storage of biosolids at a facility not  
231 located at the site of the wastewater treatment plant, preapproved by the department and  
232 constructed specifically for the storage of biosolids to be applied at any permitted site. Routine  
233 storage facilities shall be provided for all land application projects if no alternative means of  
234 management is available during nonapplication periods. No person shall apply to the department  
235 for a permit, a variance, or a permit modification authorizing storage of biosolids without first  
236 complying with all requirements adopted pursuant to § 62.1-44.19:3 A 5 of the Code of Virginia.  
237 Plans and specifications for any surface storage facilities (e.g., pits, ponds, lagoons) or  
238 aboveground facilities (e.g., tanks, pads) shall be submitted as part of the minimum information  
239 requirements. The minimum information requirements include:

240 1. Location.

241 a. The facility shall be located at an elevation that is not subject to, or is otherwise  
242 protected against, inundation produced by the 100-year flood/wave action as defined  
243 by U.S. Geological Survey or equivalent information.

244 b. Storage facilities should be located to provide minimum visibility.

245 c. All storage facilities located offsite of property owned by the generator shall be  
246 provided with a minimum 750-foot setback area. The length of the setback area  
247 considered will be the distance measured from the perimeter of the storage facility.  
248 Residential uses, high-density human activities, and activities involving food  
249 preparation are prohibited within the setback area. The department may reduce the  
250 setback requirements based on site-specific factors, such as facility size, topography,  
251 prevailing wind direction, and the inclusion of an effective windbreak in the overall  
252 design.

253 2. Design capacity.

254 a. The design capacity for storage of liquid biosolids shall be sufficient to store a  
255 minimum volume equivalent to 60 days or more average production of biosolids and  
256 the incidental wastewater generated by operation of the treatment works plus sufficient  
257 capacity necessary for: (i) the ~~25-year~~ 25-year, 24-hour design storm (incident  
258 rainfall and any runoff as may be present); (ii) net precipitation excess during the

259 storage period; and (iii) an additional one foot freeboard from the maximum water level  
260 (attributed to the sum of the ~~above~~ listed factors) to the top berm elevation. Storage  
261 capacity of less than that specified ~~above~~ in this subdivision will be considered on a  
262 case-by-case basis only if sufficient justification warrants such a reduction.

263 b. If alternative methods of management cannot be adequately verified, contractors  
264 shall provide for a minimum of 30 days of in-state routine storage capacity for the  
265 average quantity of biosolids transported into Virginia from out-of-state treatment  
266 works generating at least a Class B biosolids.

267 3. Facility design.

268 a. All drawings and specifications shall be submitted in accordance with 9VAC25-790-  
269 160.

270 b. The biosolids shall be stored on an engineered surface with a maximum  
271 permeability of  $10^{-7}$  cm/sec and of sufficient strength to support operational equipment.

272 c. Storage facilities designed to hold dewatered biosolids shall be constructed with a  
273 cover to prevent contact with precipitation.

274 d. Existing facilities permitted as routine storage facilities and designed to contain  
275 liquid biosolids may be used to store dewatered biosolids. The supernatant shall be  
276 managed as liquid biosolids in accordance with 9VAC25-32-550 E 5 d. Freeboard shall  
277 be maintained in accordance with 9VAC25-32-550 E 5 c. The department may require  
278 additional monitoring prior to land application.

279 e. Storage facilities shall be of uniform shape (i.e., round, square, rectangular) with no  
280 narrow or elongated portions.

281 f. The facilities shall also be designed to permit access of equipment necessary for  
282 loading and unloading biosolids, and shall be designed with receiving facilities to allow  
283 for even distribution of biosolids into the facility.

284 g. The design shall also provide for truck cleaning facilities.

285 4. Monitoring. All biosolids storage facilities shall be monitored in accordance with the  
286 requirements of this regulation. Plans and specifications shall be provided for such a  
287 monitoring program in accordance with the minimum information specified in 9VAC25-32-  
288 60 F and 9VAC25-32-410.

289 5. Operation.

290 a. Only biosolids suitable for land application (Class A or B biosolids) shall be placed  
291 into permitted routine storage facilities.

292 b. Storage of biosolids located offsite or remote from the wastewater treatment works  
293 during the summer months shall be avoided whenever possible so that the routine  
294 storage facility remains as empty as possible during the summer months.

295 c. Storage facilities shall be operated in a manner such that sufficient freeboard is  
296 provided to ensure that the maximum anticipated high water elevation due to any and  
297 all design storm inputs is not less than one foot below the top berm elevation.

298 d. Complete plans for supernatant disposal shall be provided in accordance with  
299 9VAC25-32-60 F. Plans for supernatant disposal may include transport to the sewage  
300 treatment works, mixing with the biosolids for land application, or land application  
301 separately. However, separate land application of supernatant will be regulated as  
302 liquid biosolids; additional testing, monitoring, and treatment (disinfection) may be  
303 required.

304 e. The facility site shall be fenced to a minimum height of five feet; gates and locks  
305 shall be provided to control access. The fence shall be posted with signs identifying

306 the facility. The fence shall not be constructed closer than 10 feet to the outside edge  
307 of the facility or appurtenances, to allow adequate accessibility.

308 f. If malodors related to the stored biosolids are verified by the department at any  
309 occupied dwelling on surrounding property, the malodor must be corrected within 48  
310 hours.

311 6. Closure. An appropriate plan of closure or abandonment shall be developed by the  
312 permittee when the facility ceases to be utilized and approved by the department. Such  
313 plans may also be reviewed by the Virginia Department of Health.

314 7. Recordkeeping. A manifest system shall be developed, implemented, and maintained  
315 and be available for inspection during operations as part of the overall daily recordkeeping  
316 for the project (9VAC25-32-60 F).

317 F. Emergency storage. Emergency storage is the short-term storage of biosolids at a location  
318 identified in an emergency management plan that has been approved by the department.  
319 Emergency storage sites may be added to an emergency management plan at any point during  
320 the permit term [ with the approval of the department ]. Emergency storage sites may only be  
321 utilized after an [ approved ] emergency management plan has been initiated following the  
322 procedures in 9VAC25-32-410. Requirements for emergency storage include the following:

323 1. The permit holder shall notify or cause to be notified the locality in which the emergency  
324 storage site is located when the request to add the site to an emergency management  
325 plan is approved;

326 2. Prior to delivering biosolids to an emergency storage site, the permit holder shall obtain  
327 the written permission of the landowner authorizing placement of biosolids at the  
328 emergency storage site. The written permission shall include a legible map or tax parcel  
329 identification number specifying the location of the emergency storage site;

330 3. Not more than 24 hours prior to delivery of biosolids to an emergency storage site, the  
331 permit holder shall notify in writing the department and the chief executive officer or  
332 designee of the local government where the site is located. This notification shall include  
333 the [ emergency storage ] site location and the source or sources of biosolids stored;

334 4. A certified land applier shall be present at the emergency storage site when biosolids  
335 are delivered. The certified land applier shall maintain documentation of the amount of  
336 each source of biosolids delivered and removed daily;

337 5. An emergency storage site shall include a surface with sufficient strength to support  
338 operational equipment;

339 6. If malodors related to the stored biosolids are verified by the department at any occupied  
340 dwelling on surrounding property, the permit holder shall correct the problem within 48  
341 hours. If the problem is not corrected within 48 hours, the permit holder must remove the  
342 biosolids from the [ emergency ] storage site;

343 7. All biosolids stored at the emergency storage site shall be prioritized for removal prior  
344 to biosolids stored at onsite or routine storage facilities;

345 8. Best management practices shall be utilized as appropriate to prevent contact with  
346 storm water run on or runoff;

347 9. Stored biosolids are to be inspected by the certified land applier at least every seven  
348 days and after precipitation events of 0.1 inches or greater to ensure that runoff controls  
349 are in good working order. Observed excessive slumping, erosion, or movement of  
350 biosolids is to be corrected within 24 hours. Any ponding or malodor at  
351 the [ emergency ] storage site is to be corrected. The certified land applier shall maintain  
352 documentation of inspections of stored biosolids;

353 10. The department may prohibit or require additional restrictions [ ; ] for emergency  
354 storage [ sites ] in areas, including karst topography and environmentally sensitive sites;  
355 11. Storage of biosolids shall be managed so as to prevent adverse impacts to water  
356 quality or public health;  
357 12. The certified land applier shall maintain documentation of any conditions or activities  
358 at the emergency storage site that are not in accordance with the approved emergency  
359 management plan; and  
360 13. Upon presentation of credentials, any duly authorized agent of the department may,  
361 at reasonable times and under reasonable circumstances during the [ active  
362 implementation ] phase of an emergency management plan, enter upon the property,  
363 public or private, where an emergency storage site is located, for the purpose of inspecting  
364 the emergency storage site for compliance with the conditions specified in [ 9VAC25-32-  
365 410 and ] this subsection.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-32
<b>VAC Chapter title(s)</b>	Virginia Pollution Abatement (VPA) Permit Regulation
<b>Action title</b>	Implementation of Chapter 209 of the 2024 Acts of Assembly (HB 870)
<b>Date this document prepared</b>	February 23, 2026
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Final

**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.

**Table 1a: Costs and Benefits of the Proposed Changes**

(1a) Direct & Indirect Costs (Monetized)	<p><b>Background:</b> This regulatory action is the result of Chapter 209 of the 2024 Acts of Assembly (HB870). The legislation amended § 62.1-44.19:3 of the Code of Virginia by adding a requirement for the State Water Control Board (Board) to include in its regulations for biosolids that are permitted for land application, marketing, or distribution: “Procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage</p>
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	<p>sludge into state waters, and to account for increased intensity, frequency, and duration of storm events.”</p> <p>Amendments to 9VAC25-32-410 and 9VAC25-32-550 allow (but do not require) permittees to include an emergency management plan as part of their biosolids management plan (BSMP) and establish provisions for emergency storage procedures under the Storage Facilities section (9VAC25-32-550). The emergency management plan, which is subject to pre-approval by the Department of Environmental Quality (Department) before it can be implemented, outlines alternate biosolids storage options to be used during or following extreme storm events when routine or on-site capacity is exceeded. These amendments aim to improve readiness, clarity, and certainty for the public and regulated community while protecting public and environmental health.</p> <p><b>Direct Costs:</b> The emergency management plan is optional, not mandatory, and only applies to permittees who elect to include this alternative in the required BSMP (see 9VAC25-32-410). As such, the estimated cost to develop an emergency management plan is expected to vary widely depending upon the level of detail included in the plan, options chosen, and number of emergency storage sites identified. For land appliers operating multiple biosolids land application sites under multiple permits, the land applier may develop a single emergency management plan that may be applicable to multiple permits. There may be county-by-county specifics for which to account; however, shared elements include procedures and general plan structure. Site-specific analysis would still need to be completed for each emergency storage site and costs would increase with the number of storage sites identified in the plan. Because the emergency management plan is optional, there are not any new mandatory requirements being imposed on the regulated community through this action.</p> <p><b>Indirect costs:</b> None</p>
<p>2 (a). Direct &amp; Indirect Benefits (Monetized)</p>	<p><b>Direct benefits:</b> Land appliers that develop emergency management plans and get them approved by the Department will be able to implement the plan when adverse weather conditions prevent land application, instead of having to divert resources to transport biosolids to temporary storage locations, pay fees for landfill disposal, seek permit variances from the Department, and/or face enforcement action for improper management practices.</p> <p><b>Indirect benefits:</b> Permittees are able to plan for emergencies and mitigate risks, thus improving their operational resilience and reducing service disruptions for both land appliers and treatment facilities that</p>

	generate biosolids. The public benefits would be reducing environmental and public health risks caused by a spill or polluted runoff from improperly stored biosolids caused by extreme weather conditions.
3 (a) Net monetized benefit	For permittees who choose to include an emergency management plan in their BSMP – and conditions exist such that permittees need to implement an approved emergency management plan – the estimated net benefits will vary. Permittees who do not opt to use an emergency management plan do not incur any additional benefits.
4 (a) Other costs and benefits that cannot be monetized	Reduced environmental and public health risks in storm-prone areas. Increased community confidence and resilience; improved operational continuity for regulated entities.
5 (a) Information Sources Used	The Department used a Regulatory Advisory Panel to develop the proposed amendments to 9VAC25-32. Members of the panel included representatives from the regulated community, agribusiness organizations, environmental groups, state and local governments, and other state agencies. Information panel members provided during meetings has been used to complete this form.

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

1 (b) Direct & Indirect Costs (Monetized)	Under the current regulations, biosolids permittees must follow an approved BSMP without an explicit mechanism for pre-approved emergency storage in the event of extreme weather conditions inhibiting their ability to land apply biosolids. If severe weather causes storage or application disruptions, permittees must use best professional judgement as to the measures they must take to avoid environmental impacts and incur potential enforcement action if the measures are not in compliance with their permit. The Department would conduct case-by-case coordination with the permittee to determine if enforcement discretion was warranted. Land applicators may also need to haul biosolids a significant distance for disposal during periods when nearby landfills may not take sewage sludge or biosolids (because they have high moisture content) or be at capacity.
2 (b). Direct & Indirect Benefits (Monetized)	<b>Direct benefits:</b> None <b>Indirect benefits:</b> None
3 (b) Net monetized benefit	None
4 (b) Other costs and benefits that cannot be monetized	<b>Other costs:</b> Status quo maintains uncertainty about the land application of biosolids or storage during extreme weather resulting in unanticipated costs for land applicators and uncertainty for the public about biosolids handling during extreme weather. <b>Other benefits:</b> None
5 (b) Information Sources Used	Regulatory Advisory Panel; Chapter 209 of the 2024 Acts of Assembly

**Table 1c: Costs and Benefits under Alternative Approach(es)**

This regulatory action is required by changes to state statute (Chapter 209 of the 2024 Acts of Assembly). No alternatives were considered because of the statutory requirement.

**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**

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p><b>Direct Costs:</b> Localities that generate biosolids because they operate a publicly owned treatment works (POTW), and land apply biosolids pursuant to a permit issued under 9VAC25-32 may incur costs if they choose to develop an emergency plan as described above in Table 1a. However, the estimated cost to develop an emergency management plan is expected to vary widely depending upon the level of detail included in the plan, options chosen, and number of emergency storage sites identified.</p> <p><b>Indirect Costs:</b> None</p> <p><b>Direct Benefits:</b> See Table 1a.</p> <p><b>Indirect Benefits:</b> See Table 1a.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct &amp; Indirect Costs</p>	<p>Direct &amp; Indirect Benefits</p>
	<p>(a) <b>Direct costs:</b> If land appliers choose to adopt an emergency management plan, their costs for plan development will vary depending upon complexity and scope of the plan. Local governments and POTWs will not incur costs if they do not land apply their own biosolids. For a locality that land applies their own biosolids, the costs would be similar as for a land applier.</p> <p><b>Indirect costs:</b> Local governments may incur costs responding to public inquiries about storage and land application</p>	<p>(b) <b>Direct benefits:</b> Localities and POTWs that land apply biosolids in accordance with a permit issued under 9VAC25-32 – and choose to adopt an emergency management plan – may avoid penalties or emergency hauling fees in the event that extreme weather conditions restrict land application and/or storage. The avoided costs would depend upon the circumstances of the non-compliance and amounts of biosolids to be hauled, both of which are too speculative to monetize.</p> <p><b>Indirect benefits:</b> None</p>

	of biosolids, which may vary widely.	
(3) Other Costs & Benefits (Non-Monetized)	<b>Indirect benefit:</b> Local governments may benefit from an improved public perception and trust in local biosolids programs. POTWs may benefit from operational flexibility during extreme weather.	
(4) Assistance	Local governments may need templates to communicate to the public during weather-related events. POTWs may need regulatory guidance on communication with haulers and scheduling. Land appliers may need technical support on approved emergency storage site criteria.	
(5) Information Sources	Regulatory Advisory Panel	

**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 direct or indirect costs are expected to impact families because the changes do not impose any fees or requirements on households. No direct benefits are expected.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) None	(b) None
(3) Other Costs & Benefits (Non-Monetized)	Indirect benefits that cannot be monetized may include increased trust in the Department, local governments, and local biosolids programs because emergency management plans are in place for extreme weather-related events.	
(4) Information Sources	Department program staff interactions with concerned citizens	

**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><b>Direct Costs:</b> Some land appliers are small businesses and will incur costs and benefits as described in Table 1a. Other impacts to small businesses are not expected.</p> <p><b>Indirect Costs:</b> None</p> <p><b>Direct Benefits:</b> (See Table 1a)</p> <p><b>Indirect benefits:</b> (See Table 1a)</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) (See Table 1a)	(b) (See Table 1a)
(3) Other Costs & Benefits (Non-Monetized)	(See Table 1a)	
(4) Alternatives	None. This regulatory effort is an optional choice for permittees. It is not mandatory. This means it offers flexibility and minimizes burden on small businesses.	
(5) Information Sources	Regulatory Advisory Panel	

**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.

VAC Section(s) Involved*	Authority of Change	Initial Count	Additions <sup>1</sup>	Subtractions	Total Net Change in Requirements
9VAC25-32-410 Biosolids Management Plan	(M/A):	2	0	0	0
	(D/A):	0	0	0	0
	(M/R):	11	0	0	0
	(D/R):	0	0	0	0
9VAC25-32-550 Storage Facilities	(M/A):	11	0	0	0
	(D/A):	2	0	0	0
	(M/R):	41	0	0	0
	(D/R):	5	0	0	0
				<b>Grand Total of Changes in Requirements:</b>	(M/A): 0
					(D/A): 0
					(M/R): 0
					(D/R): 0

<sup>1</sup> Chapter 209 of the 2024 Acts of Assembly, directs the State Water Control Board to develop procedures for addressing administrative, staging, signage, and additional on-site and alternative storage site requirements when routine and on-site storage facility capacity and holding times are anticipated to be exceeded for the purpose of protecting against the release of sewage sludge into state waters, and to account for increased intensity, frequency, and duration of storm events.

The proposed regulations achieve the statutory requirement by giving permittees the option to (1) create an emergency management plan and (2) subject to the plan, use emergency storage sites and other procedures when adverse weather conditions prevent or restrict land application of biosolids. Because the emergency management plan is optional, there are not any new mandatory requirements being imposed on the regulated community through this action.

Developing and getting approval for an emergency management plan can benefit permittees because it improves their readiness, provides clarity and certainty, and, for both them and the public, helps to protect public and environmental health by establishing standards for how to manage biosolids during extreme weather conditions.

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Cost Reductions or Increases (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Requirement</b>	<b>Initial Cost</b>	<b>New Cost</b>	<b>Overall Cost Savings/Increases</b>
9VAC25-32-410 Biosolids Management Plan	This regulatory amendment will establish procedures for addressing administrative, staging, signage, and additional on-site when routine and on-site storage facility capacity and holding times are anticipated to be exceeded.	Unknown	Varies	Varies
9VAC25-32-550 Storage Facilities	This regulatory change describes the identification, requirements, reporting, and access for emergency storage sites as part of a permittee's emergency management plan.	\$0	Varies	Varies

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Change</b>	<b>Overview of How It Reduces or Increases Regulatory Burden</b>
9VAC25-32-410 and 9VAC25-32-550	Adds option to develop an emergency management plan and designate emergency storage sites	This reduces the regulatory burden by giving permittees an option to plan ahead for extreme weather conditions, providing increased readiness, certainty, and environmental protection

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

<b>Title of Guidance Document</b>	<b>Original Word Count</b>	<b>New Word Count</b>	<b>Net Change in Word Count</b>
N/A			

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the app

**TAB D**



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**


www.deq.virginia.gov

David L. Bulova  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

**MEMORANDUM**

TO: State Water Control Board Members

FROM: Bryant Thomas, Water Resources Division Director 

DATE: March 12, 2026

SUBJECT: Fast-track amendment to the Virginia Water Protection Permit Program Regulation (9VAC25-210) in response to changes to the Local and Regional Water Supply Planning Regulation (9VAC25-780)

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At the April 7, 2026, meeting of the State Water Control Board (Board), the Board will consider the approval of amendments to Part V (9VAC25-210-300 et seq.) of the Virginia Water Protection Permit Program Regulation (VWP Regulation) using the fast-track rulemaking process. The amendments update terminology and citations to be consistent with recent changes to the Local and Regional Water Supply Planning regulation (9VAC25-780).

**Background**

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the amendments improve clarity and certainty for the regulated community and the Department of Environmental Quality (Department) by making terminology and citations in the VWP Regulation consistent with the recent amendments to the Local and Regional Water Supply Planning regulation.

**Amendments**

The Agency Background Document (Form TH-04) and amendments are attached. Detailed changes to the VWP Regulation are listed in the TH-04 and are summarized below:

- Updating a cross reference and terminology in 9VAC25-210-320 to clarify preapplication procedures for new or expanded surface water withdrawals. This update does not change existing requirements for a potential applicant.
- Removing a reference in 9VAC25-210-340 to a repealed section of 9VAC25-780.
- Updating terminology in 9VAC25-210-360 – changing “local and regional water supply plan” to “water supply plan” – to be consistent with amendments to 9VAC25-780.

### **Attorney General Certification**

The Office of the Attorney General will be sent the final regulation for certification of statutory authority.

### **Staff Recommendation**

Staff recommends the Board authorize the Department to promulgate the amendments to Part V (9VAC25-210-300 et. seq.) of the VWP Regulation for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constitutes its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the amendments.

Staff also recommends that the Board authorize the Department to set an effective date no earlier than 15 days after the close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the amendments.

### **Presenter Contact Information**

Name: Eric Seavey  
Phone: 804-754-6250  
Email: [eric.seavey@deq.virginia.gov](mailto:eric.seavey@deq.virginia.gov)

### **Attachments**

Attachment A: Text of Regulatory Amendments  
Attachment B: Agency Background Document (TH-04)  
Attachment C: Office of Regulatory Management Economic Review Form

1 **Project 8598 - Fast-Track**

2 **State Water Control Board**

3 **Fast-track amendment to the Virginia Water Protection Permit Program Regulation**  
4 **(9VAC25-210) in response to changes to the Local and Regional Water Supply Planning**  
5 **Regulation (9VAC25-780)**

6 **9VAC25-210-320. Preapplication procedures for new or expanded surface water**  
7 **withdrawals.**

8 A. Preapplication review panel. At the request of a potential applicant for a surface water  
9 withdrawal proposing to the Department of Environmental Quality to withdraw 90 million gallons  
10 a month or greater, a preapplication review panel shall be convened prior to submission of a  
11 VWP application. The preapplication review panel shall assist potential applicants that are  
12 proposing surface water withdrawals with the early identification of issues related to the  
13 protection of beneficial instream and offstream uses of state waters and the identification of the  
14 affected stream reach. DEQ shall notify the Virginia Marine Resources Commission, the Virginia  
15 Institute of Marine Science, the Virginia Department of Wildlife Resources, the Virginia  
16 Department of Conservation and Recreation, the Virginia Department of Health, the U.S. Army  
17 Corps of Engineers, the U.S. Fish and Wildlife Service, the U.S. Environmental Protection  
18 Agency, and other appropriate local, state, and federal agencies of the preapplication review  
19 panel request. These agencies shall participate to the extent practicable in the preapplication  
20 review panel by providing information and guidance on the potential natural resource impacts  
21 and regulatory implications of the options being considered by the applicant and shall provide  
22 comments within 60 days of the initial meeting of the preapplication panel.

23 B. Preapplication public notice. For new or expanded surface water withdrawals requiring an  
24 individual VWP permit and proposing to withdraw 90 million gallons a month or greater, a  
25 potential applicant shall provide information on the project, shall provide an opportunity for  
26 public comment on the proposed project, and shall assist in identifying public concerns or issues  
27 prior to filing a VWP individual permit application.

28 1. Except as provided in this subsection, the potential applicant shall provide for  
29 publication of notice once a week for two consecutive weeks in a newspaper of general  
30 circulation serving the locality where the surface water withdrawal is proposed to be  
31 located.

32 2. If requested by any person, the potential applicant shall hold at least one public  
33 information meeting. Notice of any public information meeting held pursuant to this  
34 subsection shall be provided at least 14 days prior to the public information meeting date  
35 and shall be published in the same manner as required in subdivision 1 of this  
36 subsection. A potential applicant shall submit the notice to DEQ for posting on the DEQ  
37 website. At a minimum, any notice required by this subsection shall include:

38 a. A statement of the potential applicant's intent to apply for a VWP permit for a  
39 surface water withdrawal;

40 b. The proposed location of the surface water withdrawal;

41 c. Information on how the public may request a public information meeting or, in the  
42 alternative, the date, time, and location of the public information meeting;

43 d. The name, address, and telephone number of the potential applicant, or an  
44 authorized representative who can answer questions or receive comments on the  
45 proposed surface water withdrawal; and

46 e. A statement of how oral or written public comments will be used.

47 3. ~~In accordance with the provisions of 9VAC25-780-50 C 11 and 9VAC25-780-150, a A~~  
 48 potential applicant shall not be required to publish public notice or provide an opportunity  
 49 for a public information meeting if:

50 a. a public meeting has been held within two years prior to the submittal of an  
 51 application for a VWP permit on a local or regional water supply plan, which includes  
 52 the proposed project; and

53 b. the public meeting was held in accordance with 9VAC25-780-55 or 9VAC25-780-  
 54 150.

55 4. The potential applicant shall maintain a list of persons making comment and their  
 56 addresses and shall make a good faith effort to notify commenters at the address  
 57 provided by the commenter when the public notice for the draft VWP individual permit is  
 58 available.

### 59 **9VAC25-210-340. Application requirements for surface water withdrawals.**

60 A. Persons proposing to initiate a new or expanded surface water withdrawal not excluded  
 61 from requirements of this chapter by 9VAC25-210-310, proposing to reapply for a current  
 62 permitted withdrawal, or a Federal Energy Regulatory Commission (FERC) license or relicense  
 63 associated with a surface water withdrawal, shall apply for a VWP permit.

64 B. In addition to informational requirements of 9VAC25-210-80 B and if applicable, 9VAC25-  
 65 210-80 C, applications for surface water withdrawals or a FERC license or relicense associated  
 66 with a surface water withdrawal shall include:

67 1. As part of identifying the project purpose, a narrative describing the water supply  
 68 issues that form the basis of the proposed project purpose.

69 2. The drainage area, the average annual flow and the median monthly flows at the  
 70 withdrawal point, and historical low flows if available.

71 3. The average daily withdrawal; the maximum daily, monthly, annual, and  
 72 instantaneous withdrawals; and information on the variability of the demand by season.  
 73 If the project has multiple intake structures, provide for each individual intake structure  
 74 and the cumulative volumes for the entire surface water withdrawal system.

75 4. The monthly consumptive use volume in million gallons and the average daily return  
 76 flow in million gallons per day of the proposed project and the location of the return flow,  
 77 including the latitude and longitude and the drainage area in square miles at the  
 78 discharge point.

79 5. Information on flow dependent beneficial uses along the affected stream reach. For  
 80 projects that propose a transfer of water resources from a major river basin to another  
 81 major river basin, this analysis should include both the source and receiving basins.

82 a. Evaluation of the flow dependent instream and offstream beneficial uses. Instream  
 83 beneficial uses include the protection of fish and wildlife habitat, maintenance of  
 84 waste assimilation, recreation, navigation, and cultural and aesthetic values. Offstream  
 85 beneficial uses include domestic (including public water supply),  
 86 agricultural, electric power generation, and commercial and industrial uses.

87 b. The aquatic life, including species and habitat requirements.

88 c. How the proposed withdrawal will alter flows.

89 6. Information on the proposed use of and need for the surface water and information on  
 90 how demand for surface water was determined (e.g., per capita use, population growth  
 91 rates, new uses, changes to service areas, and if applicable, acreage irrigated and  
 92 evapotranspiration effects). If during the water supply planning process, the need for the  
 93 withdrawal was established, the applicant may submit the planning process information,

94 provided that the submittal addresses all requirements of 9VAC25-210-360. The  
95 department shall deem such a submittal as meeting the requirements of this subsection.  
96 For surface water withdrawals for public water supply, see also 9VAC25-780-100 and  
97 ~~9VAC25-780-130~~.

98 7. Information describing the intake structure, to include intake screen mesh size and  
99 intake velocity.

100 8. For withdrawals proposed from an impoundment, the following:

101 a. Description of the flow or release control structures, including the minimum rate of  
102 flow, in cubic feet per second, size and capacity of the structure, and the mechanism  
103 to control the release.

104 b. Surface area in acres, maximum depth in feet, normal pool elevation, total storage  
105 capacity, and unusable storage volume in acre-feet.

106 c. The stage-storage relationship. For example, the volume of water in the  
107 impoundment at varying stages of water depth.

108 9. Whether the proposed surface water withdrawal is addressed in the water supply plan  
109 that covers the area in which the withdrawal is proposed to be located. If the proposed  
110 withdrawal is included, provide a discussion as to how the proposed withdrawal is  
111 addressed in the water supply plan, specifically in terms of projected demand, analysis  
112 of alternatives, and water conservation measures. If all or a portion of the withdrawn  
113 water will be transferred to an area not covered by the plan, the discussion shall also  
114 include the water supply plan for the area of the receiving watershed.

115 10. An alternatives analysis for the proposed surface water withdrawal, including at a  
116 minimum the criteria in 9VAC25-210-360.

117 11. For new or expanded surface water withdrawals proposing to withdraw 90 million  
118 gallons a month or greater, a summary of the steps taken to seek public input as  
119 required by 9VAC25-210-320 and an identification of the issues raised during the course  
120 of the public information meeting process.

121 12. For new or expanded surface water withdrawals that involve a transfer of water  
122 between major river basins that may impact a river basin in another state, a plan  
123 describing procedures to notify potentially affected persons, both in and outside of  
124 Virginia, of the proposed project.

125 13. For surface water withdrawals, other than for public water supply, information to  
126 demonstrate that alternate sources of water supply are available to support the operation  
127 of the facility during times of reduced instream flow.

128 14. For surface water withdrawals for public water supply, a water auditing plan for an  
129 annual water loss audit in accordance with the American Water Works Association  
130 (AWWA) methodology for water loss auditing using the most recent version of the  
131 AWWA Water Audit Software or another methodology approved by the department that  
132 estimates water loss.

133 a. A water loss audit using an approved methodology shall be conducted annually.  
134 The requirement to conduct an annual water loss audit shall begin upon permit  
135 issuance. By the end of the first year of the permit term, the permittee shall submit  
136 documentation to the department that the water loss audit has been initiated. This  
137 documentation shall include activities completed during the first year of the permit  
138 term.

139 b. The applicant shall report the results of the annual water loss audits in a report  
140 submitted at a minimum of every three years.

- 141 15. For surface water withdrawals for public water supply, a leak detection and repair  
142 plan shall be submitted. The leak detection and repair plan shall indicate how its  
143 implementation will be informed by the results of the annual water loss audit process and  
144 shall be updated during each new permit term. The plan shall include:
- 145 a. A description of how the water loss audit results are expected to inform  
146 prioritization of actions to address water loss;
  - 147 b. Where practicable, a process for the identification of equipment needs to quantify  
148 and reduce water loss;
  - 149 c. Where practicable, a schedule for inspection of equipment and distribution  
150 systems for actual water losses; and
  - 151 d. In the report required by subdivision B 14 b of this section, a description of the  
152 plan's effectiveness in addressing water loss, including revisions to those elements  
153 of the leak detection and repair plan that can be improved over the short term and  
154 long term.
- 155 16. For surface water withdrawals for commercial and industrial users, a water auditing  
156 plan for a water loss audit to be conducted beginning in the first three years of the permit  
157 term. The plan shall include a description of the methodology used to determine the  
158 water loss for the operation and the quantity of water used throughout the facility.
- 159 a. A water audit using this methodology shall be conducted once every three years.  
160 The requirement to conduct a water loss audit shall begin upon permit issuance. The  
161 permittee shall submit documentation to include activities completed during the first  
162 three years of the permit term.
  - 163 b. The applicant shall conduct a water loss audit and report the results of the water  
164 loss audits in a report submitted every three years.
- 165 17. For surface water withdrawals for commercial and industrial users, a leak detection  
166 and repair plan shall be submitted. The leak detection and repair plan shall indicate how  
167 its implementation will be informed by the results of the water loss audit process and  
168 shall be updated during each new permit term. The plan shall include:
- 169 a. A description of how the water audit results are expected to inform prioritization of  
170 actions to address water loss;
  - 171 b. Where practicable, a process for the identification of equipment needs to quantify  
172 and reduce water loss;
  - 173 c. Where practicable, a schedule for inspection of equipment and piping systems for  
174 actual water losses; and
  - 175 d. In the report required by subdivision B 16 b of this section, a description of the  
176 leak detection and repair plan's effectiveness in addressing water loss, including  
177 revisions to those elements of the leak detection and repair plan that can be  
178 improved over the short term and long term.
- 179 18. For surface water withdrawals for agricultural users, a water auditing plan for an  
180 annual water loss audit that shall be conducted annually or periodically based on  
181 agricultural management plans or irrigation management plans, including the anticipated  
182 crop rotation schedule or livestock growth stages. The water auditing plan shall include  
183 an estimate of water loss for the agricultural operation and a description of the  
184 methodology used to determine the quantity of water used throughout the agricultural  
185 operation.
- 186 a. A water audit using this methodology shall be conducted. The requirement to  
187 conduct a water loss audit shall begin upon permit issuance. By the end of the first

188 year of the permit term, the permittee shall submit documentation to the department  
189 that the water loss audit has been initiated. This documentation shall include  
190 activities completed during the first year of the permit term.

191 b. The applicant shall report the results of the water loss audit in a report submitted  
192 at a minimum every three years.

193 19. For surface water withdrawals for agricultural users, a leak detection and repair plan  
194 shall be submitted. The leak detection and repair plan shall indicate how its  
195 implementation will be informed by the results of the water loss audit process and shall  
196 be updated during each new permit term. The plan shall include:

197 a. A description of how the water audit results are expected to inform prioritization of  
198 actions to address water loss;

199 b. Where practicable, a schedule for inspection of equipment and distribution  
200 systems for actual water losses; and

201 c. In the report required by subdivision B 18 b of this section, a description of the leak  
202 detection and repair plan's effectiveness in addressing water loss, including revisions  
203 to those elements of the leak detection and repair plan that can be improved over the  
204 short term and long term.

205 C. Applications for an Emergency Virginia Water Protection Permit.

206 1. Applications for an Emergency Virginia Water Protection Permit to address a public  
207 water supply emergency shall include the information noted in subdivisions 1 a through 1  
208 o of this subsection. The JPA may be used for emergency application purposes,  
209 provided that all of the information in subdivisions 1 a through 1 o of this subsection is  
210 included:

211 a. The applicant's legal name, mailing address, telephone number, and if applicable,  
212 fax number and email address;

213 b. If different from applicant, name, mailing address, telephone number, and if  
214 applicable, fax number and email address of property owner;

215 c. If applicable, authorized agent's name, mailing address, telephone number, and if  
216 applicable, fax number and email address;

217 d. Name of water body or water bodies, or receiving waters, as applicable;

218 e. Name of the city or county where the project occurs;

219 f. Signed and dated signature page (electronic submittals containing the original  
220 signature page, such as that contained in a scanned document file are acceptable);

221 g. Permit application fee in accordance with 9VAC25-20;

222 h. The drainage area, the average annual flow and the median monthly flows at the  
223 withdrawal point, and historical low flows if available;

224 i. Information on the aquatic life along the affected stream reach, including species  
225 and habitat requirements;

226 j. Recent and current water use, including monthly water use in the previous  
227 calendar year and weekly water use in the six months prior to the application. The  
228 application shall identify the sources of such water and also identify any water  
229 purchased from other water suppliers;

230 k. A description of the severity of the public water supply emergency, including (i) for  
231 reservoirs, an estimate of days of remaining supply at current rates of use and  
232 replenishment; (ii) for wells, current production; and (iii) for intakes, current  
233 streamflow;

- 234 l. A description of mandatory water conservation measures taken or imposed by the  
 235 applicant and the dates when the measures were implemented; for the purposes of  
 236 obtaining an Emergency Virginia Water Protection Permit, mandatory water  
 237 conservation measures shall include the prohibition of lawn and landscape watering,  
 238 vehicle washing, watering of recreation fields, refilling of swimming pools, and  
 239 washing of paved surfaces;
- 240 m. An estimate of water savings realized by implementing mandatory water  
 241 conservation measures;
- 242 n. Documentation that the applicant has exhausted all management actions that  
 243 would minimize the threat to public welfare, safety, and health and will avoid the  
 244 need to obtain an emergency permit and that are consistent with existing permit  
 245 limitations; and
- 246 o. Any other information that demonstrates that the condition is a substantial threat to  
 247 public health or safety.

- 248 2. Within 14 days after the issuance of an Emergency Virginia Water Protection Permit,  
 249 the permit holder shall apply for a VWP permit under the other provisions of this chapter.

250 **9VAC25-210-360. Evaluation of project alternatives for surface water withdrawals.**

251 The applicant shall demonstrate to the satisfaction of the department that the project meets  
 252 an established need for water to meet the project purpose. In establishing need, the applicant  
 253 shall provide the following information:

- 254 1. Existing supply sources, yields, and demands, including:
- 255 a. Peak day and average daily withdrawal;
- 256 b. The public water supply safe yield and lowest daily flow of record;
- 257 c. Types of water uses; and
- 258 d. Existing water conservation measures and drought response plan, including what  
 259 conditions trigger their implementation.
- 260 2. Projected demands over a minimum 30-year planning period, including the following:
- 261 a. Projected demand contained in the ~~local or regional~~ water supply plan developed  
 262 in accordance with 9VAC25-780 or for the project service area, if such area is  
 263 smaller than the planning area; if applicable or
- 264 b. Statistical population (growth) trends; if applicable, projected demands by use  
 265 type; projected demand without water conservation measures; and projected  
 266 demands with long-term water conservation measures.
- 267 3. Any alternatives analysis conducted specifically for withdrawals for public water  
 268 supply shall include:
- 269 a. The range of alternatives to be analyzed by the applicant as follows:
- 270 (1) All applicable alternatives contained in the ~~local or regional~~ water supply plan  
 271 developed in accordance with 9VAC25-780;
- 272 (2) Alternatives that are practicable or feasible from both a technical and economic  
 273 standpoint that had not been identified in the ~~local or regional~~ water supply plan  
 274 developed in accordance with 9VAC25-780;
- 275 (3) Alternatives that are available to the applicant but not necessarily under the  
 276 current jurisdiction of the applicant; and
- 277 (4) Water conservation measures that could be considered as a means to reduce  
 278 demand for each alternative considered by the applicant.

- 279 b. The applicant shall provide a narrative description that outlines the opportunities  
280 and status of regionalization efforts undertaken by the applicant.
- 281 c. The criteria used to evaluate each alternative for the purpose of establishing the  
282 least environmentally damaging practicable alternative, which includes but is not  
283 limited to:
- 284 (1) Demonstration that the proposed alternative meets the project purpose and  
285 project demonstrated need as documented pursuant to this section;
- 286 (2) Availability of the alternative to the applicant;
- 287 (3) Evaluation of interconnectivity of water supply systems, both existing and  
288 proposed;
- 289 (4) Evaluation of the cost of the alternative on an equivalent basis;
- 290 (5) Evaluation of alternative public water supply safe yields;
- 291 (6) Presence and potential impact of alternative on state and federally listed  
292 threatened and endangered species;
- 293 (7) Presence and potential impact of alternative on wetlands and streams (based on  
294 maps and aerial photos for all alternatives, field delineation required for preferred  
295 alternative);
- 296 (8) Evaluation of effects on instream flow; and
- 297 (9) Water quality considerations, including:
- 298 (a) Land use within a watershed where the type of land use may impact the water  
299 quality of the source;
- 300 (b) The presence of impaired streams and the type of impairment;
- 301 (c) The location of point source discharges; and
- 302 (d) Potential threats to water quality other than those listed in this subdivision 3 c (9).
- 303 4. Any alternatives analysis conducted for surface water withdrawals other than for  
304 public water supply shall include the following items of subdivision 3 of this section:  
305 subdivisions 3 a (3), 3 a (4), and 3 c. The analysis shall also include applicable items of  
306 subdivisions 3 a (1), 3 a (2), and 3 b.



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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-210
<b>VAC Chapter title(s)</b>	Virginia Water Protection Permit Program Regulation
<b>Action title</b>	Fast-track amendment to the Virginia Water Protection Permit Program Regulation (9VAC25-210) in response to changes to the Local and Regional Water Supply Planning Regulation (9VAC25-780)
<b>Date this document prepared</b>	March 12, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.*

The intent of this fast-track regulatory action is to amend Part V (9VAC25-210-300 et. seq.) of the Virginia Water Protection Permit Program Regulation (VWP Regulation) to be consistent with recent amendments to the Local and Regional Water Supply Planning regulation (9VAC25-780).

The updates will improve clarity and certainty by making terminology and citations in the VWP Regulation consistent with the recent amendments to the Local and Regional Water Supply Planning regulation.

### 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.

Board: State Water Control Board  
Department: Department of Environmental Quality  
Local and Regional Water Supply Planning regulation: 9VAC25-780  
ORM: Office of Regulatory Management  
VAC: Virginia Administrative Code  
VWP: Virginia Water Protection  
VWP Regulation: Virginia Water Protection Permit Program Regulation

### 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) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."

On April 7, 2026, the State Water Control Board (Board):

1. Authorized the Department to promulgate the amendments to Part V (9VAC25-210-300 et. seq.) of the VWP Regulation for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constitutes its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the amendments, and
2. Authorized the Department to set an effective date no earlier than 15 days after the close of the 30-day public comment period provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the amendments.

### 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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, "mandate" has the same meaning as defined in the ORM procedures, "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."

Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.

Section 62.1-44.15:22 of the Code of Virginia allows conditions contained in a VWP Permit may include but are not limited to the volume of water which may be withdrawn as a part of the permitted activity and

conditions necessary to protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest beneficial uses.

On October 9, 2024, updates to the Local and Regional Water Supply Planning regulation became effective in response to amendments to §§ 62.1-44.36, 62.1-44.38, and 62.1-44.38:1 of the Code of Virginia pursuant to Chapter 1105 of the 2020 Acts of Assembly (HB 542). These updates included the requirement that localities plan regionally with other localities to develop water supply plans , and the repeal of sections within 9VAC25-780 for clarity. This regulatory change will update references to 9VAC25-780 and to water supply plans within the VWP Regulation, to improve regulatory consistency.

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because the amendments improve clarity and certainty for the regulated community and the Department by making requirements in the VWP Regulation consistent with the amendments to the Local and Regional Water Supply Planning regulation that became effective October 9, 2024. The updates to the affected sections, 9VAC25-210-320, 9VAAC25-210-340, and 9VAC25-210-360, do not change existing requirements for a potential applicant (9VAC25-210-320) or an applicant (9VAC25-210-340 and 9VAC25-210-360) for a VWP Permit.

The limited scope of this rulemaking benefits the regulated community, the Department, and other stakeholders by updating the regulation and improving clarity in a timely manner.

### Legal Basis

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

#### Promulgating Entity

The promulgating entity for this regulation is the Board.

#### State Requirements

Section 62.1-44.15:22 of the Code of Virginia allows Conditions contained in a VWP Permit may include but are not limited to the volume of water which may be withdrawn as a part of the permitted activity and conditions necessary to protect beneficial uses. Domestic and other existing beneficial uses shall be considered the highest priority uses.

### 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 is intended to solve.*

The proposed regulatory action protects water quality in the Commonwealth of Virginia which is essential to the health, safety and welfare of Virginia’s citizens and is needed in order to establish appropriate and necessary permitting requirements for surface water withdrawals under the VWP Permit Program. The goal of this regulatory action is to amend the VWP Regulation to improve clarity and certainty by making it consistent with recent changes to the Local and Regional Water Supply Planning regulation.

**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.*

Amendments to the VWP Regulation include:

- Updating references and terminology in 9VAC25-210-320 to clarify preapplication procedures for new or expanded surface water withdrawals under the VWP Permit Program. This update does not change existing requirements for a potential applicant.
- Removing a reference in 9VAC25-210-340 to a repealed section of 9VAC25-780.
- Updating terminology in 9VAC25-210-360 – changing “local and regional water supply plan” to “water supply plan” – to be consistent with amendments to 9VAC25-780.

Collectively, these amendments will provide clarity and improve understanding of the regulation. The updates to the affected sections do not change existing requirements for a potential applicant (9VAC25-210-320) or an applicant (9VAC25-210-340 and 9VAC25-210-360) for a VWP Permit.

**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.*

1. Public: There are no direct impacts on the public as the amendments to the VWP Regulation update existing regulatory requirements, so they reflect current requirements in the State Water Control Law and the Local and Regional Water Supply Planning regulation, clarify requirements, and improve understanding of the regulation, which in turn contributes to the efficient and effective functioning of government. There are no disadvantages to the public.

2. The Department: The amendments update existing regulatory requirements and will allow the Department and surface water permit applicants under the VWP Permit Program to utilize regulations that reflect current requirements in the State Water Control Law and the Local and Regional Water Supply Planning regulation, and improve the understanding of the VWP Regulation, which in turn contributes to the efficient and effective functioning of government. This is an advantage. There are no disadvantages to the Department or the Commonwealth.

**Requirements More Restrictive than Federal**

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no applicable federal requirements and therefore no requirements that exceed federal requirements.

**Agencies, Localities, and Other Entities Particularly Affected**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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 is no state agency which will bear any identified disproportionate material impact due to the proposal which would not be experienced by other state agencies.

**Localities Particularly Affected**

There is no locality which will bear any identified disproportionate material impact due to the proposal which would not be experienced by other localities.

**Other Entities Particularly Affected**

There is no entity which will bear any identified disproportionate material impact due to the proposal which would not be experienced by other entities.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including: a) fund source / fund detail.</p>	<p>The regulatory change will not result in any economic impact (cost or benefit) to the Department.</p>
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b) delineation of one-time versus on-going expenditures; and c) whether any costs or revenue loss can be absorbed within existing resources	
<i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.	The regulatory change will not result in any economic impact (cost or benefit) to any state agency.
<i>For all agencies:</i> Benefits the regulatory change is designed to produce.	The direct benefit to state agencies of updating the VWP Regulation to be consistent with recent changes in the Local and Regional Water Supply Planning regulation is to improve clarity and consistency of regulatory requirements, which will result in increased certainty and compliance.

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

Projected costs, savings, fees or revenues resulting from the regulatory change.	No impacts to any locality are anticipated.
Benefits the regulatory change is designed to produce.	ORM Economic Impact form, Table 2

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	ORM Economic Impact form, Tables 1a, 3 and 4
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	ORM Economic Impact form, Tables 1a, 3 and 4
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses;	ORM Economic Impact form, Tables 1a, 3 and 4

<p>b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change;                  c) fees;                  d) purchases of equipment or services; and                  e) time required to comply with the requirements.</p>	
<p>Benefits the regulatory change is designed to produce.</p>	<p>The direct benefit to other entities of creating consistency between the VWP Regulation and the Local and Regional Water Supply regulation is increased clarity, consistency, and certainty in the permitting process and a program that is efficiently and effectively administered.</p>

### Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

There are no practical alternatives. Failing to update the VWP Regulation (i.e., incorrect and inconsistent cross-references to applicable requirements in the Local and Water Supply Planning regulation) will likely cause misunderstanding, confusion, and inconsistent application of regulatory requirements for the Department and applicants for surface water withdrawals under the VWP Permit Program.

*If this analysis has been reported on the ORM Economic Impact form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

This analysis has been reported on the ORM Economic Review Form in Tables 1b and 1c.

### Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, 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.*

There are no alternatives to this regulatory action other than continuing to operate with the existing language with no updates.

This regulatory change is very limited in scope to include technical changes for consistency with related state regulations and to provide clarity and certainty. This action does not change the substantive requirements for surface water permit applicants under the VWP Permit Program. In addition, it does not change the technical requirements, such as determining compliance with water quality criteria that protects public health and the environment.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

If you are objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency’s regulatory flexibility analysis stated in this background document.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to Eric Seavey, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218, or [eric.seavey@deg.virginia.gov](mailto:eric.seavey@deg.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-section number	New chapter-section number, if applicable	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
9VAC25-210-320 B 3		Preapplication procedures for new or expanded	Updating cross references and terminology:

		<p>surface water withdrawals. Preapplication public notice.</p>	<p>9VAC25-780-50 C 11 was repealed on 10/09/2024. This citation is being updated to 9VAC25-780-55.</p> <p>The subdivision has been reorganized to clarify the preapplication procedure for new or expanded surface water withdrawals. A potential applicant shall not be required to publish public notice or provide an opportunity for a public information meeting if a public meeting has been held within two years prior to the submittal of an application for a VWP permit if a public meeting has been held for a water supply plan, which included the proposed project, and the public meeting was held in accordance with 9VAC25-2780-55 or 9VAC25-780-150.</p> <p>The update also removes “local or regional” when referencing a water supply plan because local water supply plans are no longer required in 9VAC25-780. This aligns the terminology with the definition of water supply plan in 9VAC25-210-300: “a document developed in compliance with 9VAC25-780.”</p> <p>These are technical updates to make the VWP Regulation consistent with the recent amendments to the Local and Regional Water Supply Planning regulation.</p> <p>The updates do not change existing requirements for a potential applicant.</p>
<p>9VAC25-210-340 B 6</p>		<p>Application requirements for surface water withdrawals.</p>	<p>Updates to regulatory citations:</p> <p>9VAC25-780-130 was repealed on 10/09/2024. This citation is being removed.</p>
<p>9VAC25-210-360 2 a, 3 a (1) and (2)</p>		<p>Evaluation of project alternatives for surface water withdrawals.</p>	<p>Updates to terminology:</p> <p>Changing “local or regional water supply plan” to “water supply plan” since local water supply plans are no longer required and to align with the definition of water supply plan in 9VAC25-210-300: “a document developed in compliance with 9VAC25-780”.</p>

			<p>These are technical updates to make the VWP Regulation consistent with the recent amendments to the Local and Regional Water Supply Planning regulation.</p>
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**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.*

The proposed regulatory action will not have an impact on families.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	Department of Environmental Quality (“Department”)
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9VAC25-210
<b>VAC Chapter title(s)</b>	Virginia Water Protection Permit Program Regulation
<b>Action title</b>	Fast-track amendment to the Virginia Water Protection Permit Regulation (9VAC25-210) in response to changes to the Local and Regional Water Supply Planning regulation (9VAC25-780)
<b>Date this document prepared</b>	March 17, 2026
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Fast-Track Regulation

**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.

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b><u>Background</u></b> The proposed regulatory action protects water quality in the Commonwealth of Virginia which is essential to the health, safety and welfare of Virginia’s citizens. The goal of this regulatory action is to amend the Virginia Water Protection Permit Program Regulation (VWP Regulation) to improve clarity and certainty by making the regulations</p>
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	<p>consistent with recent changes to the Local and Regional Water Supply Planning regulation (9VAC25-780).</p> <p><b>Direct &amp; Indirect Costs:</b>  The amendments to the Part V (9VAC25-210-300 et. seq.) of the VWP Regulation will make it consistent with recent amendments to the Local and Regional Water Supply Planning regulation. The amendments improve clarity and certainty for VWP permit applicants and the Department by making 9VAC25-210 internally consistent with applicable requirements in the Local and Regional Water Supply Planning regulation. Since the amendments are to be consistent with other regulations that are currently effective there are no new direct or indirect costs associated with the proposed changes.</p> <p><b>Direct Benefits:</b>  The amendments ensure the VWP Regulation is consistent with related regulatory requirements provide clarity and certainty to VWP permit applicants. This regulatory action makes the VWP Regulation easier to understand and implement. The Department is unable to quantify these benefits because they do not make any substantive changes to the VWP Regulation or its requirements.</p> <p><b>Indirect Benefits:</b>  Improving clarity of requirements saves time for localities and the regulated community and improves understanding of and compliance with regulatory requirements. Better understanding and compliance protects state waters, water quality, habitat, and recreational use.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with these regulatory changes.	(b) The Department is unable to quantify these benefits.
(3) Net Monetized Benefit	Unknown (see discussion above).	
(4) Other Costs & Benefits (Non-Monetized)	Unknown (see discussion above).	
(5) Information Sources	N/A	

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> The “status quo” option would be to continue to use language that is inconsistent with other existing State Water Control Board (Board) regulations. No direct costs would be incurred by the Department.</p> <p><b>Indirect Costs:</b> The primary indirect cost with the “status quo” is the additional staff time needed for permittees, the Department, local authorities, and other stakeholders to resolve inconsistencies between the VWP Regulation and the Local and Regional Water Supply Planning regulation. The Department is unable to quantify these costs.</p> <p><b>Direct Benefits:</b> There are no benefits to maintaining incorrect information and requirements in the regulation.</p> <p><b>Indirect Benefits:</b> There are not any indirect benefits to maintaining the status quo.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to monetize indirect costs associated with the status quo.	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	The Department is not aware of any alternatives to this regulatory change. The regulatory change is very limited in scope to include technical amendments for consistency with other effective regulations of the Board.	
(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)	N/A
(5) Information Sources	N/A

**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)	<p><b>Direct Costs:</b> There are no direct costs to local partners because this action does not change the existing responsibilities of the regulated communities or local governments. The amendments improve clarity and certainty for the regulated community and the Department by making the requirements in the VWP Regulation consistent with the recent amendments to the Local and Water Supply Planning regulation.</p> <p><b>Indirect Costs:</b> There are no known indirect costs associated with the proposed changes.</p> <p><b>Direct Benefits:</b> The direct benefit to local partners is reduced confusion, which will result in less staff time in reviewing, processing, and working through issues related to the VWP permitting process.</p> <p><b>Indirect Benefits:</b> Improving clarity and consistency of requirements saves time for local partners and improves understanding of and compliance with regulatory requirements.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to monetize direct and indirect costs.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Assistance	N/A	
(5) Information Sources	N/A	

### **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)	<p><b>Direct Costs:</b> There are no direct costs that impact families associated with the proposed changes.</p> <p><b>Indirect Costs:</b> There are no indirect costs that impact families associated with the proposed changes.</p> <p><b>Direct Benefits:</b> There are no direct benefits that impact families associated with the proposed changes.</p> <p><b>Indirect Benefits:</b> There are no indirect benefits that impact families associated with the proposed changes.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Information Sources	N/A	

### **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)	Small businesses would have the same impact as described in Table 1a above. The Department is unable to identify the number of small businesses that would benefit from this regulatory change.
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with the regulatory changes.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Alternatives	N/A	
(5) Information Sources	N/A	

**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	Total Net Change in Requirements
9VAC25-210-320	(M/A):	5	0	0	0
	(D/A):	0	0	0	0
	(M/R):	12	0	0	0
	(D/R):	0	0	0	0
9VAC25-210-340	(M/A):	1	0	0	0
	(D/A):	0	0	0	0
	(M/R):	30	0	0	0
	(D/R):	5	0	0	0
9VAC25-210-360	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	5	0	0	0
	(D/R):	0	0	0	0
				<b>Grand Total of Changes in Requirements:</b>	(M/A): 0
					(D/A): 0
					(M/R): 0
					(D/R): 0

**Key:**

Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

*Cost Reductions or Increases (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Requirement</b>	<b>Initial Cost</b>	<b>New Cost</b>	<b>Overall Cost Savings/Increases</b>
N/A				

*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Change</b>	<b>Overview of How It Reduces or Increases Regulatory Burden</b>
N/A		

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

<b>Title of Guidance Document</b>	<b>Original Length</b>	<b>New Length</b>	<b>Net Change in Length</b>
N/A			

# TAB E



*Commonwealth of Virginia*

**VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY**

[www.deq.virginia.gov](http://www.deq.virginia.gov)

David L. Bulova  
Secretary of Natural and Historic Resources

Michael S. Rolband, PE, PWD, PWS Emeritus  
Director

**MEMORANDUM**

TO: State Water Control Board Members

FROM: Jaime B. Robb, Water Operations Director *Jaime B. Robb*

DATE: March 13, 2026

SUBJECT: Amend the Virginia Erosion and Stormwater Management (VESM) Regulation to improve the efficiency of permit fee collection

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At the April 7, 2026, meeting of the State Water Control Board (Board), the Board will consider the approval of amendments to the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875, effective July 1, 2026) using the fast-track rulemaking process. The amendments (i) make fee collection procedures used by the Department of Environmental Quality (Department) and localities that administer a Virginia Erosion and Stormwater Management Program (VESMP) more efficient; (ii) increase regulatory clarity; and (iii) create consistency between the VESM Regulation and Fees for Permits and Certificates (9VAC25-20, effective November 23, 2022).

The amendments will improve the Department's permit processing procedures by requiring the full fee for coverage under the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) or a VPDES individual permit for construction activities to be paid at the time of application (i.e., when an applicant submits a stormwater management plan or erosion control and stormwater management plan (ESM plan), if required). The amendments will also clarify fee due dates for maintenance, applications for individual and general Municipal Separate Storm Sewer System (MS4) permits, and requests for transfers or modifications of MS4 permits, Construction General Permits, and VPDES individual permits.

**Background**

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because it does not significantly change the burden on the regulated community. The regulatory change is narrow in scope and does not increase permit fees, rather it

specifies when the full fee amount is due during the permitting process. This rulemaking benefits the regulated community, localities, the Department, and other stakeholders by providing regulatory clarity and consistency, and by making the permitting process more efficient.

Section 62.1-44.15:28 of the Code of Virginia (effective July 1, 2024) requires the Board's regulations to include a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or Virginia Stormwater Management Program (VSMP) authority. Per the existing regulation, fee collection for coverage under the Construction General Permit may be divided into two payments: no more than 50% of the total fee amount is due at the time that a plan is submitted for review, and the remaining fee balance is due prior to issuance of coverage under the Construction General Permit. The Department and VESMP authorities have the option to forgo charging any portion of the permit fee at the time of plan submission and may charge the full amount prior to permit coverage issuance. However, this option does not consistently satisfy § 62.1-44.15:28 of the Code of Virginia, which mandates the establishment of a statewide fee schedule to cover all costs associated with implementation of a VESMP or VSMP, including plan review. When no fee is collected at the time of application (i.e., when an applicant submits a stormwater management plan or ESM plan, if required), the program costs incurred for plan processing and review may not be recuperated. This regulatory action ensures the full fee amount is collected at the time that an application is submitted.

### **Amendments**

The Agency Background Document (Form TH-04) and amendments that are being presented to the Board for approval to proceed with the fast-track rulemaking process are attached. Detailed changes to the VESM Regulation are listed in the TH-04 and are summarized below:

- Adding clarification within 9VAC25-875-1330 that applications will not be processed until the required fees are paid at the time of application submittal, unless the Department approves an alternate payment schedule.
- Clarifying what an application submission may include for those land-disturbing activities which require approval of an ESM plan or stormwater management plan.
- Organizing 9VAC25-875-1330 to create consistency with 9VAC25-20-60, which establishes fee schedules and due dates for other agency water permit programs, and to increase regulatory clarity regarding fee due dates for applications, modifications, transfers, and maintenance fees.
- Removing from 9VAC25-875-1400 the requirement that no more than 50% of the total fee to be paid by an applicant is due at the time that a plan is submitted for review.

### **Attorney General Certification**

The Office of the Attorney General will be sent the final regulation for certification of statutory authority.

### **Staff Recommendation**

Staff recommends the Board authorize the Department to promulgate the amendments to the VESM Regulation for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be non-controversial. The Board's authorization constitutes its adoption at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the amendments.

Staff also recommends that the Board authorize the Department to set an effective date no earlier than 15 days after close of the 30-day public comment period, or July 2, 2026, whichever is later, provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the amendments.

### **Presenter Contact Information**

Name: Jaime Robb, Water Operations Director  
Phone: 804-527-5086  
Email: Jaime.Robb@deq.virginia.gov

### **Attachments**

Attachment A: Text of Regulatory Amendments  
Attachment B: Agency Background Document (TH-04)  
Attachment C: Office of Regulatory Management Economic Review Form

1 Fast-Track Regulatory Action – 9VAC25-875 – Amend the Virginia Erosion and Stormwater  
2 Management (VESM) Regulation to improve the efficiency of permit fee collection – for April 7,  
3 2026, State Water Control Board meeting.

4  
5 Part VIII

6  
7 Fees

8  
9 **9VAC25-875-1330. Due dates for permits.**

10 A. ~~Requests~~ An application or request for a permit, permit modification, or general permit  
11 coverage shall not be processed until the fees required pursuant to this part are paid in  
12 accordance with 9VAC25-875-1340, unless the department approves an alternate payment  
13 schedule.

14 B. VPDES Permits for discharges of stormwater from construction activities.

15 1. The fees for new coverage under a General VPDES Permit for Discharges of  
16 Stormwater from Construction Activities or an individual permit, as specified in 9VAC25-  
17 875-1400, are due at the time an application is submitted. An application may include the  
18 submission of an ESM plan or stormwater management plan for review in accordance with  
19 9VAC25-875-530, or a variance or exception request.

20 ~~B. 2.~~ Individual permit or general permit coverage maintenance fees, as specified in  
21 9VAC25-875-1420, shall be paid annually to the department or the VESMP authority, as  
22 applicable, by April 1 of each year after the initial year of issuance, including owners whose  
23 individual permit or general permit coverage has been administratively continued. No  
24 permit will be reissued or automatically administratively continued without payment of the  
25 required fee. Individual permit or general permit coverage maintenance fees shall be  
26 applied until a notice of permit termination is effective.

27 3. Fees for modification or transfer of individual permits or of registration statements for  
28 coverage under a General VPDES Permit for Discharges of Stormwater from Construction  
29 Activities, as specified in 9VAC25-875-1410, are due at the time an application or request  
30 is submitted for a modification or transfer that occurs (and becomes effective) before the  
31 stated permit expiration date. There is no application fee for a modification or transfer that  
32 is made at the department's initiative.

33 C. VPDES Permits for MS4s.

34 1. The fees for issuance of a new MS4 individual permit or coverage under a MS4 General  
35 Permit, as specified in 9VAC25-875-1380, are due at the time an application is submitted.

36 2. Permit maintenance fees for MS4 individual permits or MS4 general permit coverages,  
37 as specified in 9VAC25-875-1420, are due by October 1 of each year. ~~Effective April 1,~~  
38 2014, any ~~Any~~ operator whose MS4 individual permit or MS4 general permit coverage,  
39 including operators whose ~~permits~~ MS4 individual permit or MS4 general permit  
40 coverages ~~have coverage~~ has been administratively continued, is effective as of April 1 of  
41 any given year shall pay the permit maintenance fee or fees to the department or the  
42 VESMP authority by October 1 of that same year.

43 ~~Permit maintenance fees for discharges of stormwater from construction activities~~  
 44 ~~pursuant to 9VAC25-875-1420 are due by April 1 of each year. After approval of a VESMP~~  
 45 ~~authority, including the department when acting in that capacity, any owner whose permit~~  
 46 ~~or general permit coverage authorizing discharges of stormwater from construction~~  
 47 ~~activities, including owners whose permits or general permit coverages have been~~  
 48 ~~administratively continued, is effective as of the effective date of the VESMP authority~~  
 49 ~~shall pay the permit maintenance fee or fees to the department or the VESMP authority~~  
 50 ~~by April 1 of that same year.~~

51 3. When a modification of a MS4 individual permit is requested by the permittee, except  
 52 as specifically exempt under 9VAC25-875-1320, the required fee as specified in 9VAC25-  
 53 875-1390 is due at the time an application or request for modification is submitted.

54  
 55 **9VAC25-875-1400. Fees for individual permit or coverage under the General Permit for**  
 56 **Discharges of Stormwater from Construction Activities.**

57 A. The following total fees to be paid by an applicant apply to any operator seeking coverage  
 58 under a General VPDES Permit for Discharges of Stormwater from Construction Activities or a  
 59 state agency or federal entity that does not file standards and specifications or an individual permit  
 60 issued by the department. ~~On and after approval by the department or a VESMP authority for~~  
 61 ~~coverage under the General VPDES Permit for Discharges of Stormwater from Construction~~  
 62 ~~Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be~~  
 63 ~~due at the time that a stormwater management plan or an initial stormwater management plan is~~  
 64 ~~submitted for review in accordance with 9VAC25-875-530. The remaining total fee balance to be~~  
 65 ~~paid by an applicant shall be due prior to the issuance of coverage under the General VPDES~~  
 66 ~~Permit for Discharges of Stormwater from Construction Activities.~~

67 When a site is purchased for development within a previously permitted common plan of  
 68 development or sale, the applicant shall be subject to fees ("total fee to be paid by applicant"  
 69 column) in accordance with the disturbed acreage of the applicant's site according to the following  
 70 table.

Fee type	Total fee to be paid by applicant (includes both VESMP authority and department portions where applicable)	Department portion of "total fee to be paid by applicant" (based on 30% of total fee paid*)
Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage; sites within designated areas of Chesapeake Bay Act localities with land-disturbance acreage equal to or greater than 2,500 square feet and less than one acre)	\$290	\$0
General / Stormwater Management - Small Construction Activity/Land-Disturbing Activity in a Chesapeake Bay Preservation Area (not subject to General Permit coverage)/Land Clearing (Single-family detached residential structures within or outside a common plan of	\$209	\$0

development or sale with land-disturbance acreage less than five acres)		
General / Stormwater Management - Small Construction Activity/Land Clearing (Areas within common plans of development or sale with land-disturbance acreage less than one acre, except for single-family detached residential structures)	\$450	\$135
General / Stormwater Management - Small Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than one acre and less than five acres)	\$4,100	\$1,230
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than five acres and less than 10 acres)	\$5,100	\$1,530
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 10 acres and less than 50 acres)	\$6,800	\$2,040
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 50 acres and less than 100 acres)	\$9,100	\$2,730
General / Stormwater Management - Large Construction Activity/Land Clearing (Sites or areas within common plans of development or sale with land-disturbance acreage equal to or greater than 100 acres)	\$14,300	\$4,290
Individual VPDES Permit for Discharges of Stormwater from Construction Activities (This will be administered by the department)	\$24,000	\$24,000
*If the project is completely administered by the department such as may be the case where the department is the VSMP authority, the VESMP authority for a state or federal project, or projects covered by individual permits, the entire applicant fee shall be paid to the department.		

71 The following fees apply to coverage under the General VPDES Permit for Discharges of  
72 Stormwater from Construction Activities issued by the department for a state agency or federal  
73 entity that has standards and specifications approved by the department.

General / Stormwater Management - Phase I Land Clearing (Large Construction Activity - Sites or common plans of development equal to or greater than five acres)	\$1,200
General / Stormwater Management - Phase II Land Clearing (Small Construction Activity - Sites or common plans of development equal to or greater than one acre and less than five acres)	\$700

74 B. The amount of the permit fee due for a General VPDES Permit for Discharges of Stormwater  
75 from Construction Activities for a specified year as required by subsection A of this section shall  
76 be calculated according to the formulas in 9VAC25-875-1375 B.



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## Fast-Track Regulation Agency Background Document

<b>Agency name</b>	State Water Control Board
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-875
<b>VAC Chapter title(s)</b>	Virginia Erosion and Stormwater Management Regulation
<b>Action title</b>	Amend the Virginia Erosion and Stormwater Management (VESM) Regulation to improve the efficiency of permit fee collection
<b>Date this document prepared</b>	March 13, 2026

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Order 19 (2022) (EO 19), any instructions or procedures issued by the Office of Regulatory Management (ORM) or the Department of Planning and Budget (DPB) pursuant to EO 19, the Regulations for Filing and Publishing Agency Regulations (1 VAC 7-10), 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.*

The intent of this fast-track regulatory action is to amend provisions of the Virginia Erosion and Stormwater Management (VESM) Regulation (9VAC25-875, effective July 1, 2026) to (i) make fee collection procedures used by the Department of Environmental Quality (Department) and localities that administer a Virginia Erosion and Stormwater Management Program (VESMP) more efficient; (ii) increase regulatory clarity; and (iii) create consistency between the VESM Regulation and Fees for Permits and Certificates (9VAC25-20, effective November 23, 2022).

The amendments will improve the Department's permit processing procedures by requiring the full fee for coverage under the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) or for a VPDES individual permit for construction activities to be paid at the time of application (i.e., when an applicant submits a stormwater management plan or erosion control and stormwater management plan (ESM plan),

if required). The amendments will also clarify fee due dates for maintenance, applications for individual and general Municipal Separate Storm Sewer System (MS4) permits, and requests for transfers or modifications of MS4 permits, Construction General Permits, and VPDES individual permits for construction activities.

## 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.*

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- Board: State Water Control Board
- Construction General Permit: General VPDES Permit for Discharges of Stormwater from Construction Activities
- Department: Department of Environmental Quality
- ESM plan: Erosion control and stormwater management plan or soil erosion control and stormwater management plan
- MS4: Municipal Separate Storm Sewer System
- VESMP: Virginia Erosion and Stormwater Management Program
- VESM Regulation: Virginia Erosion and Stormwater Management Regulation, 9VAC25-875
- VPDES: Virginia Pollutant Discharge Elimination System
- VSMP: Virginia Stormwater Management Program

## 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) that the agency has "adopted final amendments" to the regulation; 3) the name of the agency taking the action; and 4) the title of the regulation. A suggested statement is, "On [insert date] the Board/Department of [insert name] adopted final amendments to the [title of regulation(s)]."*

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On April 7, 2026, the State Water Control Board (Board):

1. Authorized the Department to promulgate the proposal for public comment using the fast-track process established in § 2.2-4012.1 of the Administrative Process Act for regulations expected to be noncontroversial. The Board's authorization constituted its adoption of the regulation at the end of the public comment period provided that (i) no objection to use of the fast-track process is received from 10 or more persons, or any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, and (ii) the Department does not find it necessary, based on public comments or for any other reason, to make any changes to the proposal.
  
2. Authorized the Department to set an effective date no earlier than 15 days after the close of the 30-day public comment period, or July 2, 2026, whichever is later, provided (i) the proposal completes the fast-track rulemaking process as provided in § 2.2-4012.1 of the Administrative Process Act and (ii) the Department does not find it necessary to make any changes to the proposal.

## 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, petition for rulemaking, periodic review, or board decision). For purposes of executive branch review, “mandate” has the same meaning as defined in the ORM procedures, “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.”*

*Consistent with Virginia Code § 2.2-4012.1, also explain why this rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process.*

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Section 62.1-44.15:28 of the Code of Virginia (effective July 1, 2024) authorizes the Board to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources; subsection 9 requires the Board’s regulations to include a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or Virginia Stormwater Management Program (VSMP) authority.

The impetus for this change is the Department’s goal to efficiently and successfully collect the fees necessary to cover the costs associated with plan review, permit registration statement review, permit issuance, permit coverage verification, inspections, reporting, and compliance activities associated with the land-disturbing activities as well as program oversight, as mandated by § 62.1-44.15:28 of the Code of Virginia.

This rulemaking is expected to be noncontroversial and therefore appropriate for the fast-track rulemaking process because it does not significantly change the burden on the regulated community. The regulatory change is narrow in scope and does not increase permit fees, rather it specifies when the full fee amount is due during the permitting process. This rulemaking benefits the regulated community, localities, the Department, and other stakeholders by providing regulatory clarity and consistency, and by making the permitting process more efficient.

### Legal Basis

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

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#### Promulgating Entity

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

#### State Requirements

Section 62.1-44.15:28 of the Code of Virginia (effective July 1, 2024) authorizes the Board to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any VESMP to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources. Sections 62.1-44.15:28 and 62.1-44.15:31 of the Code of Virginia authorize the establishment of a statewide fee schedule,

including administrative charges for state agencies, for stormwater management for land-disturbing activities, and for municipal separate storm sewer systems.

### 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 is intended to solve.*

The rationale for the regulatory action is to improve the efficiency of the Department's procedures for permits issued under the authority of the Board, especially the Construction General Permit. Per the existing regulation, fee collection for coverage under the Construction General Permit may be divided into two payments: no more than 50% of the total fee amount is due at the time that a plan is submitted for review, and the remaining fee balance is due prior to issuance of coverage under the Construction General Permit. The Department and VESMP authorities have the option to forgo charging any portion of the permit fee at the time of plan submission and may charge the full amount prior to permit coverage issuance. However, this option does not consistently satisfy § 62.1-44.15:28 of the Code of Virginia, which mandates the establishment of a statewide fee schedule to cover all costs associated with implementation of a VESMP or VSMP, including plan review. When no fee is collected at the time of application (i.e., when an applicant submits a stormwater management plan or ESM plan, if required), the program costs incurred for plan processing and review may not be recuperated. This regulatory action ensures the full fee amount is collected at the time that an application is submitted. In addition, it is the goal of this regulatory action to provide increased clarity and consistency regarding fee due dates for applications, modifications, transfers, and maintenance fees. The amendments are part of the Department's initiative to make permit processing more efficient.

This regulatory action will become effective as outlined above in the Statement of Final Agency Action, unless the Department approves an alternate payment schedule. All applications for a Construction General Permit that are submitted prior to the effective date of this regulatory action will be subject to the requirements in effect at the time of submission (i.e., no more than 50% of the total fee to be paid by an applicant shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 9VAC25-875-530; the remaining total fee balance to be paid by an applicant shall be due prior to the issuance of coverage under the Construction General Permit).

This regulatory action protects water quality in the Commonwealth of Virginia by ensuring the Department and localities that administer a VESMP have adequate resources for plan review, permitting, and program administration. Robust plan review, permitting, and inspection/compliance programs reduce erosion and stormwater runoff from land-disturbing activity and its impacts to protect water quality throughout the Commonwealth, which is essential to the health, safety, and welfare of Virginia's citizens.

### 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.*

The substance of this regulatory action is to amend sections 1330 and 1400 of the VESM Regulation (9VAC25-875) as follows:

- Adding clarification within 9VAC25-875-1330 that applications will not be processed until the required fees are paid at the time of application submittal, unless the Department approves an alternate payment schedule.
- Clarifying what an application submission may include for those land-disturbing activities which require approval of an ESM plan or stormwater management plan.
- Organizing 9VAC25-875-1330 to create consistency with 9VAC25-20-60, which establishes fee schedules and due dates for other agency water permit programs, and to increase regulatory clarity regarding fee due dates for applications, modifications, transfers, and maintenance fees.
- Removing from 9VAC25-875-1400 the requirement that no more than 50% of the total fee to be paid by an applicant is due at the time that a plan is submitted for review.

Together, these amendments will provide regulatory clarity, consistency, and make the permitting process more efficient.

### 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.*

1. Public: The primary advantage of this regulatory change for the public is an enhanced statewide erosion and stormwater management program that will be properly funded. This change will result in improved efficiency in the permitting process. In addition, the public will benefit from greater clarity of the fee collection procedures. The primary disadvantage will be adjusting from the current method of fee collection for Construction General Permits and VPDES individual permits for construction activities. However, the change does not increase permit fees, rather it specifies when the fee is due during the permitting process, so the disadvantage is expected to be minimal.

2. The Department: The updates will allow the Department and VESMP authorities to collect the full fee amount for a Construction General Permit at the beginning of the application process (i.e., when a plan is submitted, if required). This is an advantage. There are no disadvantages to the agency or the Commonwealth.

### Requirements More Restrictive than Federal

*Identify and describe any requirement of the regulatory change which is more restrictive than applicable federal requirements. Include a specific citation for each applicable federal requirement, and a rationale for the need for the more restrictive requirements. If there are no applicable federal requirements, or no requirements that exceed applicable federal requirements, include a specific statement to that effect.*

There are no applicable federal requirements and therefore no requirements that exceed federal requirements.

### Agencies, Localities, and Other Entities Particularly Affected

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify any other state agencies, localities, or other entities particularly affected by the regulatory change. Other entities could include local partners such as tribal governments, school boards, community services boards, and similar regional organizations. "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 is no state agency which will bear any identified disproportionate material impact due to the proposal which would not be experienced by other state agencies.

Localities Particularly Affected

There is no locality which will bear any identified disproportionate material impact due to the proposal which would not be experienced by other localities.

Other Entities Particularly Affected

There is no entity which will bear any identified disproportionate material impact due to the proposal which would not be experienced by other entities.

**Economic Impact**

*Consistent with § 2.2-4007.04 of the Code of Virginia, identify all specific economic impacts (costs and/or benefits), anticipated to result from the regulatory change. When describing a particular economic impact, specify which new requirement or change in requirement creates the anticipated economic impact. Keep in mind that this is the proposed change versus the status quo.*

**Impact on State Agencies**

<p><i>For your agency:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including:                  a) fund source / fund detail;                  b) delineation of one-time versus on-going expenditures; and                  c) whether any costs or revenue loss can be absorbed within existing resources</p>	<p>The regulatory change will be beneficial for the Department. By collecting the full fee amount associated with issuing a Construction General Permit or VPDES individual permit for construction activities at the beginning of the application process, the Department will ensure that the program costs incurred for plan processing and review are recuperated.</p>
<p><i>For other state agencies:</i> projected costs, savings, fees or revenues resulting from the regulatory change, including a delineation of one-time versus on-going expenditures.</p>	<p>The regulatory change will not result in any additional cost to any state agency.</p>
<p><i>For all agencies:</i> Benefits the regulatory change is designed to produce.</p>	<p>The direct benefit to state agencies of updating the fee collection procedures in 9VAC25-875 is a statewide stormwater management program that will be properly funded and efficiently and consistently administered.</p>

**Impact on Localities**

*If this analysis has been reported on the ORM Economic Review Form, indicate the tables (1a or 2) on which it was reported. Information provided on that form need not be repeated here.*

Projected costs, savings, fees or revenues resulting from the regulatory change.	The regulatory change will be beneficial for localities who administer a VESMP. By collecting the full fee amount associated with issuing a Construction General Permit at the beginning of the application process, localities will ensure that the program costs incurred for plan processing and review are recuperated.
Benefits the regulatory change is designed to produce.	ORM Economic Review Form, Table 2.

**Impact on Other Entities**

*If this analysis has been reported on the ORM Economic Review Form, indicate the tables (1a, 3, or 4) on which it was reported. Information provided on that form need not be repeated here.*

Description of the individuals, businesses, or other entities likely to be affected by the regulatory change. If no other entities will be affected, include a specific statement to that effect.	ORM Economic Review Form, Tables 1a, 3 and 4
Agency's best estimate of the number of such entities that will be affected. Include an estimate of the number of small businesses affected. Small business means a business entity, including its affiliates, that: a) is independently owned and operated and; b) employs fewer than 500 full-time employees or has gross annual sales of less than \$6 million.	ORM Economic Review Form, Tables 1a, 3 and 4
All projected costs for affected individuals, businesses, or other entities resulting from the regulatory change. Be specific and include all costs including, but not limited to: a) projected reporting, recordkeeping, and other administrative costs required for compliance by small businesses; b) specify any costs related to the development of real estate for commercial or residential purposes that are a consequence of the regulatory change; c) fees; d) purchases of equipment or services; and e) time required to comply with the requirements.	ORM Economic Review Form, Tables 1a, 3 and 4
Benefits the regulatory change is designed to produce.	The direct benefit to other entities of updating the fee collection procedures in 9VAC25-875 is a statewide stormwater management program that will be properly funded and efficiently and consistently administered.

## Alternatives to Regulation

*Describe any viable alternatives to the regulatory change that were considered, and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the regulatory change. Also, include discussion of less intrusive or less costly alternatives for small businesses, as defined in § 2.2-4007.1 of the Code of Virginia, of achieving the purpose of the regulatory change.*

The Department examined two alternatives as part of this regulatory amendment. The first alternative is to leave Chapter 875 unchanged, allowing applicants to continue using the existing fee payment due date requirements and procedures. This alternative is more burdensome because it could result in the Department not receiving payment for plan reviews and approvals and it affects the Department's efforts to improve and implement a more efficient permit processing initiative. In addition, this alternative would not provide increased regulatory clarity. The second alternative is to only remove the condition that no more than 50% of the total fee is due at the time of plan submission, without amending 9VAC25-875-1330 to provide clarity. While this alternative may seem to be a simpler regulatory change, it would potentially create confusion for the regulated community based on the existing format of 9VAC25-20, Fees for Permits and Certificates, which established fees and due dates for other VPDES permits, Virginia Pollution Abatement Program permits, and Virginia Water Protection Program permits. Neither of these alternatives were expected to be less costly or less intrusive for small businesses while still achieving the purpose of the regulatory change and they were rejected.

*If this analysis has been reported on the ORM Economic Review Form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

This analysis has been reported on the ORM Economic Review Form in Tables 1b and 1c.

## Regulatory Flexibility Analysis

*Consistent with § 2.2-4007.1 B of the Code of Virginia, 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 regulatory change is narrow in scope and does not increase permit fees or the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. The proposed change is not expected to have an adverse impact on small business; however, the proposed regulation does include the ability for the Department to approve an alternate payment schedule, which will allow for flexibility when necessary.

*If this analysis has been reported on the ORM Economic Review Form, indicate the tables on which it was reported. Information provided on that form need not be repeated here.*

This analysis has been reported on the ORM Economic Review Form in Table 4.

## Public Participation

*Indicate how the public should contact the agency to submit comments on this regulation, and whether a public hearing will be held, by completing the text below.*

*Consistent with § 2.2-4011 of the Code of Virginia, if an objection to the use of the fast-track process is received within the 30-day public comment period from 10 or more persons, any member of the applicable standing committee of either house of the General Assembly or of the Joint Commission on Administrative Rules, the agency shall: 1) file notice of the objections with the Registrar of Regulations for publication in the Virginia Register and 2) proceed with the normal promulgation process with the initial publication of the fast-track regulation serving as the Notice of Intended Regulatory Action.*

Anyone objecting to the use of the fast-track process as the means of promulgating this regulation, please clearly indicate your objection in your comment. Please also indicate the nature of, and reason for, your objection to using this process.

The Department is providing an opportunity for comments on this regulatory proposal, including but not limited to (i) the costs and benefits of the regulatory proposal and any alternative approaches, (ii) the potential impacts of the regulation, and (iii) the agency's regulatory flexibility analysis stated in this background document. Also, the Board is seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reported, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments for the public comment file may do so through the Public Comment Forums feature of the Virginia Regulatory Town Hall web site at: <https://townhall.virginia.gov>. Comments may also be submitted by mail or email to April Rhodes, Program Manager, Office of Stormwater Management, Virginia Department of Environmental Quality, P.O. Box 1105, Richmond, Virginia 23218, or [April.Rhodes@deq.virginia.gov](mailto:April.Rhodes@deq.virginia.gov). In order to be considered, comments must be received by 11:59 pm on the last day of the public comment period.

## Detail of Changes

*List all regulatory changes and the consequences of the changes. Explain the new requirements and what they mean rather than merely quoting the text of the regulation. For example, describe the intent of the language and the expected impact. Describe the difference between existing requirement(s) and/or agency practice(s) and what is being proposed in this regulatory change. Use all tables that apply, but delete inapplicable tables.*

*If an existing VAC Chapter(s) is being amended or repealed, use Table 1 to describe the changes between existing VAC Chapter(s) and the proposed regulation. If existing VAC Chapter(s) or sections are being repealed and replaced, ensure Table 1 clearly shows both the current number and the new number for each repealed section and the replacement section.*

**Table 1: Changes to Existing VAC Chapter(s)**

Current chapter-	New chapter-section	Current requirements in VAC	Change, intent, rationale, and likely impact of new requirements
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section number	number, if applicable		
9VAC25-875-1330		<p>9VAC25-875-1330. Due dates for permits.</p> <p>A. Requests for a permit, permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with 9VAC25-875-1340.</p> <p>B. Individual permit or general permit coverage maintenance fees shall be paid annually to the department or the VESMP authority, as applicable. No permit will be reissued or automatically continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a notice of termination is effective.</p> <p>Permit maintenance fees for MS4 individual permits or MS4 general permit coverages are due by October 1 of each year. Effective April 1, 2014, any operator whose permit or general permit coverage, including operators whose permits or general permit coverages have been administratively continued, is effective as of April 1 of any given year shall pay the permit maintenance fee or fees to the department or the VESMP authority by October 1 of that same year.</p> <p>Permit maintenance fees for discharges of stormwater from construction activities pursuant to 9VAC25-875-1420 are due by April 1 of each year. After approval of a VESMP authority, including</p>	<p>9VAC25-875-1330. Due dates for permits.</p> <p>A. <del>Requests</del> <u>An application or request</u> for a permit, permit modification, or general permit coverage shall not be processed until the fees required pursuant to this part are paid in accordance with 9VAC25-875-1340, <u>unless the department approves an alternate payment schedule.</u></p> <p>B. <u>VPDES Permits for discharges of stormwater from construction activities.</u></p> <p>1. <u>The fees for new coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities or an individual permit, as specified in 9VAC25-875-1400, are due at the time an application is submitted. An application may include the submission of an ESM plan or stormwater management plan for review in accordance with 9VAC25-875-530, or a variance or exception request.</u></p> <p>B- <u>2. Individual permit or general permit coverage maintenance fees, as specified in 9VAC25-875-1420, shall be paid annually to the department or the VESMP authority, as applicable, by April 1 of each year after the initial year of issuance, including owners whose individual permit or general permit coverage has been administratively continued. No permit will be reissued or automatically administratively continued without payment of the required fee. Individual permit or general permit coverage maintenance fees shall be applied until a notice of permit termination is effective.</u></p> <p>3. <u>Fees for modification or transfer of individual permits or of registration statements for coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities, as specified in 9VAC25-875-1410, are due at the time an application or request is submitted for a modification or transfer</u></p>

		<p>the department when acting in that capacity, any owner whose permit or general permit coverage authorizing discharges of stormwater from construction activities, including owners whose permits or general permit coverages have been administratively continued, is effective as of the effective date of the VESMP authority shall pay the permit maintenance fee or fees to the department or the VESMP authority by April 1 of that same year.</p>	<p><u>that occurs (and becomes effective) before the stated permit expiration date. There is no application fee for a modification or transfer that is made at the department's initiative.</u></p> <p><u>C. VPDES Permits for MS4s.</u></p> <p><u>1. The fees for issuance of a new MS4 individual permit or coverage under a MS4 General Permit, as specified in 9VAC25-875-1380, are due at the time an application is submitted.</u></p> <p><u>2. Permit maintenance fees for MS4 individual permits or MS4 general permit coverages, as specified in 9VAC25-875-1420, are due by October 1 of each year. Effective April 1, 2014, any Any operator whose MS4 individual permit or MS4 general permit coverage, including operators whose permits MS4 individual permit or MS4 general permit coverages have coverage has been administratively continued, is effective as of April 1 of any given year shall pay the permit maintenance fee or fees to the department or the VESMP authority by October 1 of that same year.</u></p> <p><del>Permit maintenance fees for discharges of stormwater from construction activities pursuant to 9VAC25-875-1420 are due by April 1 of each year. After approval of a VESMP authority, including the department when acting in that capacity, any owner whose permit or general permit coverage authorizing discharges of stormwater from construction activities, including owners whose permits or general permit coverages have been administratively continued, is effective as of the effective date of the VESMP authority shall pay the permit maintenance fee or fees to the department or the VESMP authority by April 1 of that same year.</del></p> <p><u>3. When a modification of a MS4 individual permit is requested by the permittee, except as specifically exempt under 9VAC25-875-1320, the required</u></p>
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			<p><u>fee as specified in 9VAC25-875-1390 is due at the time an application or request for modification is submitted.</u></p> <p>Rationale:                  This amendment specifies applications will not be processed without payment of the required fee, unless an alternate schedule is approved by the Department. The amendment also reorganizes parts of the section and corrects terms to provide clarity and consistency internally and with 9VAC25-20. This is a benefit to the regulated community and the Department. Aside from requiring payment for new coverage at the time of application, the amendment does not change any other existing requirements.</p>
<p>9VAC25-875-1400 A</p>		<p>9VAC25-875-1400. Fees for individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.</p> <p>A. The following total fees to be paid by an applicant apply to any operator seeking coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities or a state agency or federal entity that does not file standards and specifications or an individual permit issued by the department. On and after approval by the department or a VESMP authority for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in</p>	<p>9VAC25-875-1400. Fees for individual permit or coverage under the General Permit for Discharges of Stormwater from Construction Activities.</p> <p>A. The following total fees to be paid by an applicant apply to any operator seeking coverage under a General VPDES Permit for Discharges of Stormwater from Construction Activities or a state agency or federal entity that does not file standards and specifications or an individual permit issued by the department. <del>On and after approval by the department or a VESMP authority for coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities, no more than 50% of the total fee to be paid by an applicant set out in this part shall be due at the time that a stormwater management plan or an initial stormwater management plan is submitted for review in accordance with 9VAC25-875-530. The remaining total fee balance to be paid by an applicant shall be due prior to the issuance of coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities.</del></p> <p>Rationale:</p>

		<p>accordance with 9VAC25-875-530. The remaining total fee balance to be paid by an applicant shall be due prior to the issuance of coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities.</p>	<p>This amendment moves the fee due date requirements from section 1400 to section 1330, to consolidate all due date information in section 1330. In conjunction with the amendments to section 1330 B 1, this change clarifies that the total fee is due at the time an application is submitted. This benefits the regulated community and the Department by simplifying the fee payment process.</p>
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**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.*

The proposed regulatory action will not have an impact on families.

Office of Regulatory Management  
Economic Review Form

<b>Agency name</b>	Department of Environmental Quality (“Department”)
<b>Virginia Administrative Code (VAC) Chapter citation(s)</b>	9 VAC 25-875
<b>VAC Chapter title(s)</b>	Virginia Erosion and Stormwater Management Regulation
<b>Action title</b>	Amend the Virginia Erosion and Stormwater Management (VESM) Regulation to improve the efficiency of permit fee collection
<b>Date this document prepared</b>	March 13, 2026
<b>Regulatory Stage (including Issuance of Guidance Documents)</b>	Fast-Track Regulation

**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.

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Background:</b> Section 62.1-44.15:28 of the Code of Virginia (effective July 1, 2024) authorizes the State Water Control Board (Board) to adopt regulations that establish requirements for the effective control of soil erosion, sediment deposition, and stormwater, including nonagricultural runoff, that shall be met in any Virginia Erosion and Stormwater Management Program (VESMP) to prevent the unreasonable degradation of properties, stream channels, waters, and other natural resources;</p>
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subsection 9 requires the Board’s regulations to establish a statewide fee schedule to cover all costs associated with the implementation of a VESMP related to land-disturbing activities where permit coverage is required, and for land-disturbing activities where the Board serves as a VESMP authority or Virginia Stormwater Management Program (VSMP) authority.

In addition, Item 363 J of the 2024-2026 budget, as introduced during the 2024 General Assembly Session in HB 6001 / SB 6001 and enacted in Chapter 2 of the 2024 Special Session I Acts of Assembly (Budget Bill), directs the Board to amend the existing permit fee schedule such that the fees for the Virginia Pollutant Discharge Elimination System (VPDES) Permit for Discharges of Stormwater from Construction Activities (Construction General Permit) and Municipal Separate Storm Sewer System (MS4) permits are set at an amount representing no less than 60 percent, not to exceed 62 percent, of the direct costs for the administration, compliance, and enforcement of such permits.

The proposed regulatory change is consistent with the Department’s goal to increase the efficiency of permit processing and approval, effectively collect the fees described above, and to provide clarity and consistency for the regulated community.

**Direct & Indirect Costs:**

The VESM Regulation amendments will remove the option to collect 50% of the total fee amount at the time that a plan is submitted for review and instead require the full fee amount at the time of application submission (i.e., when an applicant submits a stormwater management plan or erosion control and stormwater management plan (ESM plan), if required) for coverage under the Construction General Permit. The regulatory change updates and clarifies when the full fee amount is due during the permitting process and ensures costs associated with plan review are covered; it does not increase permit fees or change the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. Therefore, there are no new direct or indirect costs associated with the proposed changes.

**Direct & Indirect Benefits:**

The updates will allow the Department and localities that administer a VESMP to collect the full fee amount for coverage under the Construction General Permit at the beginning of the application process. This regulatory change benefits the regulated community, localities, the Department, and other stakeholders by providing regulatory clarity and by making the permitting process more efficient. The Department is

	unable to quantify these benefits because they do not make any substantive changes to the regulation or its requirements.	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with these regulatory changes.	(b) The Department is unable to quantify these benefits.
(3) Net Monetized Benefit	Unknown (see discussion above).	
(4) Other Costs & Benefits (Non-Monetized)	Unknown (see discussion above).	
(5) Information Sources	N/A	

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

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> The “status quo” option would be to continue to use the existing fee payment due date requirements and procedures. No direct costs would be incurred by the Department.</p> <p><b>Indirect Costs:</b> The primary indirect cost with the “status quo” is the inability for the Department to implement an improved and more efficient permit processing initiative. Per the current regulation, the option to collect the fee in two separate payments may result in additional processing time and staff resources, especially when payments are late or incomplete. Alternatively, if the total fee is collected as the last step in the permitting process, the program costs incurred for plan processing and review may not be recuperated. The Department is unable to quantify these costs.</p> <p><b>Direct &amp; Indirect Benefits:</b> There are no direct or indirect benefits to maintaining the status quo.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to monetize direct and indirect costs.	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	N/A	

(4) Other Costs & Benefits (Non-Monetized)	N/A
(5) Information Sources	N/A

**Table 1c: Costs and Benefits under Alternative Approach(es)**

(1) Direct & Indirect Costs & Benefits (Monetized)	<p><b>Direct Costs:</b> The alternative option considered would be to remove the condition that no more than 50% of the total fee is due at the time of plan submission, without amending the section with due dates to improve clarity. There are no direct costs to this option.</p> <p><b>Indirect Costs:</b> This option could potentially create confusion for the regulated community based on the structure of the fee regulations, which could result in delays and additional processing time caused by uncertainty. The Department is unable to quantify these costs.</p> <p><b>Direct &amp; Indirect Benefits:</b> There are no direct or indirect benefits to this option.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) Unable to monetize direct and indirect costs.	(b) Unable to monetize direct and indirect benefits.
(3) Net Monetized Benefit	N/A	
(4) Other Costs & Benefits (Non-Monetized)	N/A	
(5) Information Sources	N/A	

**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**

<p>(1) Direct &amp; Indirect Costs &amp; Benefits (Monetized)</p>	<p><b>Direct Costs:</b> There are no direct costs to local partners because this action does not change the existing responsibilities of local governments to implement a VESMP consistent with requirements in the Virginia Erosion and Stormwater Management Act (Chapter 3.1 of the State Water Control Law, Article 2.3 of Title 62.1 of the Code of Virginia).</p> <p><b>Indirect Costs:</b> The indirect costs associated with the proposed change are additional staff time necessary for local staff to gain awareness of and implement the regulatory changes. The Department is unable to quantify these costs.</p> <p><b>Direct &amp; Indirect Benefits:</b> The proposed change will allow localities who administer a VESMP to collect the full fee amount for coverage under the Construction General Permit at the beginning of the application process. This regulatory change benefits localities by making the permitting process more efficient. In addition, the proposed change does include the ability for the Department to approve an alternate payment schedule, which will allow for flexibility when necessary. The Department is unable to quantify these benefits because they do not change the fee amount or requirement to pay a fee, only the timing of the payment.</p>	
<p>(2) Present Monetized Values</p>	<p>Direct &amp; Indirect Costs</p>	<p>Direct &amp; Indirect Benefits</p>
	<p>(a) Unable to monetize direct and indirect costs.</p>	<p>(b) Unable to monetize direct and indirect benefits.</p>
<p>(3) Other Costs &amp; Benefits (Non-Monetized)</p>	<p>N/A</p>	
<p>(4) Assistance</p>	<p>N/A</p>	
<p>(5) Information Sources</p>	<p>N/A</p>	

**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)	<p><b>Direct Costs:</b> There are no direct costs that impact families associated with the proposed changes.</p> <p><b>Indirect Costs:</b> There are no indirect costs that impact families associated with the proposed changes.</p> <p><b>Direct Benefits:</b> There are no direct benefits that impact families associated with the proposed changes.</p> <p><b>Indirect Benefits:</b> There are no indirect benefits that impact families associated with the proposed changes.</p>	
(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) N/A	(b) N/A
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Information Sources	N/A	

**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>This regulatory change is narrow in scope and does not increase permit fees or the substantive requirements for owners and operators to submit plans, obtain permits, and maintain compliance with requirements to control erosion and stormwater runoff from land-disturbing activities. The proposed change is not expected to have an adverse impact on small business; however, the proposed regulation does include the ability for the Department to approve an alternate payment schedule, which will allow for flexibility when necessary. The Department is unable to identify the number of small businesses that would benefit from this regulatory change.</p>
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(2) Present Monetized Values	Direct & Indirect Costs	Direct & Indirect Benefits
	(a) No monetized direct or indirect costs associated with the regulatory changes.	(b) Unable to monetize direct and indirect benefits.
(3) Other Costs & Benefits (Non-Monetized)	N/A	
(4) Alternatives	N/A	
(5) Information Sources	N/A	

**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	Total Net Change in Requirements
9VAC25-875-1330	(M/A):	1	0	0	0
	(D/A):	0	0	0	0
	(M/R):	4	2	0	+2*
	(D/R):	0	0	0	0
9VAC25-875-1400	(M/A):	0	0	0	0
	(D/A):	0	0	0	0
	(M/R):	3	0	-1	-1
	(D/R):	0	0	0	0
				<b>Grand Total of Changes in Requirements:</b>	(M/A): 0 (D/A): 0 (M/R): +2* (D/R): -1

**Key:**

*Please use the following coding if change is mandatory or discretionary and whether it affects externally regulated parties or only the agency itself:*

**(M/A):** Mandatory requirements mandated by federal and/or state statute affecting the agency itself

**(D/A):** Discretionary requirements affecting agency itself

**(M/R):** Mandatory requirements mandated by federal and/or state statute affecting external parties, including other agencies

**(D/R):** Discretionary requirements affecting external parties, including other agencies

\* The two new requirements clarify that fees are due upon application. They existed prior to the amendments but were not explicitly set out. There is no change to the responsibility of the regulated community to pay the stated fees.

*Cost Reductions or Increases (if applicable)*

VAC Section(s) Involved*	Description of Regulatory Requirement	Initial Cost	New Cost	Overall Cost Savings/Increases
9VAC25-875-1330	Due dates for fee payment	0	0	0

9VAC25-875-1400	Schedule of fees	0	0	0
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*Other Decreases or Increases in Regulatory Stringency (if applicable)*

<b>VAC Section(s) Involved*</b>	<b>Description of Regulatory Change</b>	<b>Overview of How It Reduces or Increases Regulatory Burden</b>
9VAC25-875-1330	Due dates for fee payment	Reduces the regulatory burden by clarifying when fees are due.
9VAC25-875-1400	Fees due upon submission of application	Reduces the regulatory burden by requiring a single payment.

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

<b>Title of Guidance Document</b>	<b>Original Word Count</b>	<b>New Word Count</b>	<b>Net Change in Word Count</b>

\*If the agency is modifying a guidance document that has regulatory requirements, it should report any change in requirements in the appropriate chart(s).