

HOUSE BILL NO. 1283

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on/for _____

on _____)

(Patron Prior to Substitute--Delegate Gooditis)

A BILL to amend and reenact §§ 62.1-44.15:35, as it is currently effective and as it shall become effective, and 62.1-44.19:20 relating to nutrient credit generation; report.

Be it enacted by the General Assembly of Virginia:

1. That §§ 62.1-44.15:35, as it is currently effective and as it shall become effective, and 62.1-44.19:20 of the Code of Virginia are amended and reenacted as follows:

§ 62.1-44.15:35. (For expiration date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017, c. 345) Nutrient credit use and additional offsite options for construction activities.

A. As used in this section:

"HUC" means an eight-digit hydrologic unit code as defined by the U.S. Geological Survey.

"Nutrient credit" or "credit" means a nutrient credit certified pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

"Tributary," within the Chesapeake Bay watershed, has the same meaning as in § 62.1-44.19:13. For areas outside of the Chesapeake Bay watershed, "tributary" includes the following watersheds: Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston (Upper Tennessee); New River; Roanoke; and Yadkin.

"Virginia Stormwater Management Program Authority" or "VSMP authority" has the same meaning as in § 62.1-44.15:24 and includes, until July 1, 2014, any locality that has adopted a local stormwater management program.

B. A VSMP authority is authorized to allow compliance with stormwater nonpoint nutrient runoff water quality criteria established pursuant to § 62.1-44.15:28, in whole or in part, through the use of the applicant's acquisition of nutrient credits in the same tributary.

27 C. No applicant shall use nutrient credits to address water quantity control requirements. No
28 applicant shall use nutrient credits or other offsite options in contravention of local water quality-based
29 limitations (i) determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted pursuant to § 62.1-
30 44.15:33 or other applicable authority, (iii) deemed necessary to protect public water supplies from
31 demonstrated adverse nutrient impacts, or (iv) as otherwise may be established or approved by the Board.
32 Where such a limitation exists, offsite options may be used provided that such options do not preclude or
33 impair compliance with the local limitation.

34 D. A VSMP authority shall allow offsite options in accordance with subsection I when:

- 35 1. Less than five acres of land will be disturbed;
- 36 2. The postconstruction phosphorous control requirement is less than 10 pounds per year; or
- 37 3. The state permit applicant demonstrates to the satisfaction of the VSMP authority that (i)
38 alternative site designs have been considered that may accommodate onsite best management practices,
39 (ii) onsite best management practices have been considered in alternative site designs to the maximum
40 extent practicable, (iii) appropriate onsite best management practices will be implemented, and (iv) full
41 compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably
42 be met onsite. For purposes of this subdivision, if an applicant demonstrates onsite control of at least 75
43 percent of the required phosphorous nutrient reductions, the applicant shall be deemed to have met the
44 requirements of clauses (i) through (iv).

45 E. Documentation of the applicant's acquisition of nutrient credits shall be provided to the VSMP
46 authority and the Department in a certification from the credit provider documenting the number of
47 phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the credit-
48 generating entity. Until the effective date of regulations establishing application fees in accordance with
49 § 62.1-44.19:20, the credit provider shall pay the Department a water quality enhancement fee equal to
50 six percent of the amount paid by the applicant for the credits. Such fee shall be deposited into the Virginia
51 Stormwater Management Fund established by § 62.1-44.15:29.

52 F. Nutrient credits used pursuant to subsection B shall be generated in the same ~~or adjacent eight-~~
53 ~~digit hydrologic unit code as defined by the United States Geological Survey~~ HUC as the permitted site

54 except as otherwise limited in subsection C. Nutrient credits outside the same ~~or adjacent eight digit~~
55 ~~hydrologic unit code~~ HUC may only be used if it is determined by the VSMP authority that no credits are
56 available within the same ~~or adjacent eight digit hydrologic unit code~~ HUC when the VSMP authority
57 accepts the final site design. In such cases, and subject to other limitations imposed in this section, credits
58 available within (i) an adjacent HUC or (ii) the same tributary, if no credits are available within an adjacent
59 HUC, may be used. In no case shall credits from another tributary be used.

60 G. For that portion of a site's compliance with stormwater nonpoint nutrient runoff water quality
61 criteria being obtained through nutrient credits, the applicant shall (i) comply with a 1:1 ratio of the
62 nutrient credits to the site's remaining postdevelopment nonpoint nutrient runoff compliance requirement
63 being met by credit use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ 62.1-
64 44.19:12 et seq.).

65 H. No VSMP authority may grant an exception to, or waiver of, postdevelopment nonpoint nutrient
66 runoff compliance requirements unless offsite options have been considered and found not available.

67 I. The VSMP authority shall require that nutrient credits and other offsite options approved by the
68 Department or applicable state board, including locality pollutant loading pro rata share programs
69 established pursuant to § 15.2-2243, achieve the necessary nutrient reductions prior to the commencement
70 of the applicant's land-disturbing activity. A pollutant loading pro rata share program established by a
71 locality pursuant to § 15.2-2243 and approved by the Department or applicable state board prior to January
72 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-
73 disturbing activity, may continue to operate in the approved manner for a transition period ending July 1,
74 2014. The applicant shall have the right to select between the use of nutrient credits or other offsite options,
75 except during the transition period in those localities to which the transition period applies. The locality
76 may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata share
77 program under § 15.2-2243 for nutrient reductions in the same tributary within the same locality as the
78 land-disturbing activity or for the acquisition of nutrient credits. In the case of a phased project, the
79 applicant may acquire or achieve the offsite nutrient reductions prior to the commencement of each phase
80 of the land-disturbing activity in an amount sufficient for each such phase.

81 J. Nutrient reductions obtained through nutrient credits shall be credited toward compliance with
82 any nutrient allocation assigned to a municipal separate storm sewer system in a Virginia Stormwater
83 Management Program Permit or Total Maximum Daily Load applicable to the location where the activity
84 for which the nutrient credits are used takes place. If the activity for which the nutrient credits are used
85 does not discharge to a municipal separate storm sewer system, the nutrient reductions shall be credited
86 toward compliance with the applicable nutrient allocation.

87 K. A VSMP authority shall allow the full or partial substitution of perpetual nutrient credits for
88 existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer pounds of
89 the annual phosphorous requirement associated with the original land-disturbing activity or (ii) existing
90 onsite controls are not functioning as anticipated after reasonable attempts to comply with applicable
91 maintenance agreements or requirements and the use of nutrient credits will account for the deficiency.
92 Upon determination by the VSMP authority that the conditions established by clause (i) or (ii) have been
93 met, the party responsible for maintenance shall be released from maintenance obligations related to the
94 onsite phosphorous controls for which the nutrient credits are substituted.

95 L. To the extent available, with the consent of the applicant, the VSMP authority, the Board or the
96 Department may include the use of nutrient credits or other offsite measures in resolving enforcement
97 actions to compensate for (i) nutrient control deficiencies occurring during the period of noncompliance
98 and (ii) permanent nutrient control deficiencies.

99 M. This section shall not be construed as limiting the authority established under § 15.2-2243;
100 however, under any pollutant loading pro rata share program established thereunder, the subdivider or
101 developer shall be given appropriate credit for nutrient reductions achieved through nutrient credits or
102 other offsite options.

103 N. In order to properly account for allowed nonpoint nutrient offsite reductions, an applicant shall
104 report to the Department, in accordance with Department procedures, information regarding all offsite
105 reductions that have been authorized to meet stormwater postdevelopment nonpoint nutrient runoff
106 compliance requirements.

107 O. An applicant or a permittee found to be in noncompliance with the requirements of this section
108 shall be subject to the enforcement and penalty provisions of this article.

109 § 62.1-44.15:35. (For effective date, see Acts 2016, cc. 68 and 758, as amended by Acts 2017,
110 c. 345) **Nutrient credit use and additional offsite options for construction activities.**

111 A. As used in this section:

112 "Nutrient credit" or "credit" means a type of offsite option that is a nutrient credit certified pursuant
113 to Article 4.02 (§ 62.1-44.19:12 et seq.).

114 "Offsite option" means an alternative available, away from the real property where land
115 disturbance is occurring, to address water quality or water quantity technical criteria established pursuant
116 to § 62.1-44.15:28.

117 "Tributary," within the Chesapeake Bay watershed, has the same meaning as in § 62.1-44.19:13.
118 For areas outside of the Chesapeake Bay watershed, "tributary" includes the following watersheds:
119 Albemarle Sound, Coastal; Atlantic Ocean, Coastal; Big Sandy; Chowan; Clinch-Powell; New Holston
120 (Upper Tennessee); New River; Roanoke; and Yadkin.

121 B. No offsite option shall be used in contravention of local water quality-based limitations (i)
122 determined pursuant to subsection B of § 62.1-44.19:14, (ii) adopted pursuant to § 62.1-44.15:33 or other
123 applicable authority, (iii) deemed necessary to protect public water supplies from demonstrated adverse
124 nutrient impacts, or (iv) as otherwise may be established or approved by the Board. Where such a
125 limitation exists, offsite options may be used provided that such options do not preclude or impair
126 compliance with the local limitation.

127 C. Unless prohibited by subsection B, a VESMP authority or a VSMP authority:

128 1. May allow the use of offsite options for compliance with water quality and water quantity
129 technical criteria established pursuant to § 62.1-44.15:28, in whole or in part; and

130 2. Shall allow the use of nutrient credits for compliance with the water quality technical criteria
131 when:

132 a. Less than five acres of land will be disturbed;

133 b. The phosphorous water quality reduction requirement is less than 10 pounds per year; or

134 c. It is demonstrated to the satisfaction of the VESMP or VSMP authority that (i) alternative site
135 designs have been considered that may accommodate onsite best management practices, (ii) onsite best
136 management practices have been considered in alternative site designs to the maximum extent practicable,
137 (iii) appropriate onsite best management practices will be implemented, and (iv) compliance with water
138 quality technical criteria cannot practicably be met onsite. The requirements of clauses (i) through (iv)
139 shall be deemed to have been met if it is demonstrated that onsite control of at least 75 percent of the
140 required phosphorous water quality reduction will be achieved.

141 D. No VSMP or VESMP authority may grant an exception to, or waiver of, post-development
142 nonpoint nutrient runoff compliance requirements unless offsite options have been considered and found
143 not available.

144 E. The VSMP or VESMP authority shall require that offsite options approved by the Department
145 or applicable state board achieve the necessary phosphorous water quality reductions prior to the
146 commencement of the land-disturbing activity. A pollutant loading pro rata share program established by
147 a locality pursuant to § 15.2-2243 and approved by the Department or applicable state board prior to
148 January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-
149 disturbing activity, may continue to operate in the approved manner for a transition period ending July 1,
150 2014. In the case of a phased project, the land disturber may acquire or achieve the offsite nutrient
151 reductions prior to the commencement of each phase of the land-disturbing activity in an amount sufficient
152 for each such phase. The land disturber shall have the right to select between the use of nutrient credits or
153 other offsite options, except during the transition period in those localities to which the transition period
154 applies.

155 F. With the consent of the land disturber, in resolving enforcement actions, the VESMP authority
156 or the Board may include the use of offsite options to compensate for (i) nutrient control deficiencies
157 occurring during the period of noncompliance and (ii) permanent nutrient control deficiencies.

158 G. This section shall not be construed as limiting the authority established under § 15.2-2243;
159 however, under any pollutant loading pro rata share program established thereunder, the subdivider or
160 developer shall be given appropriate credit for nutrient reductions achieved through offsite options. The

161 locality may use funds collected for nutrient reductions pursuant to a locality pollutant loading pro rata
162 share program for nutrient reductions in the same tributary within the same locality as the land-disturbing
163 activity, or for the acquisition of nutrient credits.

164 H. Nutrient credits shall not be used to address water quantity technical criteria. Nutrient credits
165 shall be generated in the same ~~or adjacent~~ fourth order subbasin, as defined by the hydrologic unit
166 boundaries of the National Watershed Boundary Dataset, as the land-disturbing activity. If no credits are
167 available within ~~these subbasins~~ such subbasin when the VESMP or VSMP authority accepts the final site
168 design, credits available within (i) an adjacent fourth order subbasin or (ii) the same tributary, if no credits
169 are available in an adjacent subbasin, may be used. The following requirements apply to the use of nutrient
170 credits:

171 1. Documentation of the acquisition of nutrient credits shall be provided to the VESMP authority
172 and the Department or the VSMP authority in a certification from the credit provider documenting the
173 number of phosphorus nutrient credits acquired and the associated ratio of nitrogen nutrient credits at the
174 credit-generating entity.

175 2. Until the effective date of regulations establishing application fees in accordance with § 62.1-
176 44.19:20, the credit provider shall pay the Department a water quality enhancement fee equal to six percent
177 of the amount paid for the credits. Such fee shall be deposited into the Virginia Stormwater Management
178 Fund established by § 62.1-44.15:29.

179 3. For that portion of a site's compliance with water quality technical criteria being obtained
180 through nutrient credits, the land disturber shall (i) comply with a 1:1 ratio of the nutrient credits to the
181 site's remaining post-development nonpoint nutrient runoff compliance requirement being met by credit
182 use and (ii) use credits certified as perpetual credits pursuant to Article 4.02 (§ 62.1-44.19:12 et seq.).

183 4. A VESMP or VSMP authority shall allow the full or partial substitution of perpetual nutrient
184 credits for existing onsite nutrient controls when (i) the nutrient credits will compensate for 10 or fewer
185 pounds of the annual phosphorous requirement associated with the original land-disturbing activity or (ii)
186 existing onsite controls are not functioning as anticipated after reasonable attempts to comply with
187 applicable maintenance agreements or requirements and the use of nutrient credits will account for the

188 deficiency. Upon determination by the VESMP or VSMP authority that the conditions established by
189 clause (i) or (ii) have been met, the party responsible for maintenance shall be released from maintenance
190 obligations related to the onsite phosphorous controls for which the nutrient credits are substituted.

191 I. The use of nutrient credits to meet post-construction nutrient control requirements shall be
192 accounted for in the implementation of total maximum daily loads and MS4 permits as specified in
193 subdivisions 1, 2, and 3. In order to ensure that the nutrient reduction benefits of nutrient credits used to
194 meet post-construction nutrient control requirements are attributed to the location of the land-disturbing
195 activity where the credit is used, the following account method shall be used:

196 1. Chesapeake Bay TMDL.

197 a. Where nutrient credits are used to meet nutrient reduction requirements applicable to
198 redevelopment projects, a 1:1 credit shall be applied toward MS4 compliance with the Chesapeake Bay
199 TMDL waste load allocation or related MS4 permit requirement applicable to the MS4 service area,
200 including the site of the land-disturbing activity, such that the nutrient reductions of redevelopment
201 projects are counted as part of the MS4 nutrient reductions to the same extent as when land-disturbing
202 activities use onsite measures to comply.

203 b. Where nutrient credits are used to meet post-construction requirements applicable to new
204 development projects, the nutrient reduction benefits represented by such credits shall be attributed to the
205 location of the land-disturbing activity where the credit is used to the same extent as when land-disturbing
206 activities use onsite measures to comply.

207 c. A 1:1 credit shall be applied toward compliance by a locality that operates a regulated MS4 with
208 its Chesapeake Bay TMDL waste load allocation or related MS4 permit requirement to the extent that
209 nutrient credits are obtained by the MS4 jurisdiction from a nutrient credit-generating entity as defined in
210 § 62.1-44.19:13 independent of or in excess of those required to meet the post-construction requirements.

211 2. Local nutrient-related TMDLs adopted prior to the land-disturbing activity.

212 a. Where nutrient credits are used to meet nutrient reduction requirements applicable to
213 redevelopment projects, a 1:1 credit shall be applied toward MS4 compliance with any local TMDL waste
214 load allocation or related MS4 permit requirement applicable to the MS4 service area, including the site

215 of the land-disturbing activity, such that the nutrient reductions of redevelopment projects are counted as
216 part of the MS4 nutrient reductions to the same extent as when land-disturbing activities use onsite
217 measures to comply, provided the nutrient credits are generated upstream of where the land-disturbing
218 activity discharges to the water body segment that is subject to the TMDL.

219 b. Where nutrient credits are used to meet post-construction requirements applicable to new
220 development projects, the nutrient reduction benefits represented by such credits shall be attributed to the
221 location of the land-disturbing activity where the credit is used to the same extent as when land-disturbing
222 activities use onsite measures to comply, provided the nutrient credits are generated upstream of where
223 the land-disturbing activity discharges to the water body segment that is subject to the TMDL.

224 c. A 1:1 credit shall be applied toward MS4 compliance with any local TMDL waste load
225 allocation or related MS4 permit requirement to the extent that nutrient credits are obtained by the MS4
226 jurisdiction from a nutrient credit-generating entity as defined in § 62.1-44.19:13 independent of or in
227 excess of those required to meet the post-construction requirements. However, such credits shall be
228 generated upstream of where the land-disturbing activity discharges to the water body segment that is
229 subject to the TMDL.

230 3. Future local nutrient-related TMDLs.

231 This subdivision applies only to areas where there has been a documented prior use of nutrient
232 credits to meet nutrient control requirements in an MS4 service area that flows to or is upstream of a water
233 body segment for which a nutrient-related TMDL is being developed. For a TMDL waste load allocation
234 applicable to the MS4, the Board shall develop the TMDL waste load allocation with the nutrient reduction
235 benefits represented by the nutrient credit use being attributed to the MS4, except when the Board
236 determines during the TMDL development process that reasonable assurance of implementation cannot
237 be provided for nonpoint source load allocations due to the nutrient reduction benefits being attributed in
238 this manner. The Board shall have no obligation to account for nutrient reduction benefits in this manner
239 if the MS4 does not provide the Board with adequate documentation of (i) the location of the land-
240 disturbing activities, (ii) the number of nutrient credits, and (iii) the generation of the nutrient credits
241 upstream of the site at which the land-disturbing activity discharges to the water body segment addressed

242 by the TMDL. Such attribution shall not be interpreted as amending the requirement that the TMDL be
243 established at a level necessary to meet the applicable water quality standard.

244 **§ 62.1-44.19:20. Nutrient credit certification.**

245 A. The Board may adopt regulations for the purpose of establishing procedures for the certification
246 of point source nutrient credits except that no certification shall be required for point source nitrogen and
247 point source phosphorus credits generated by point sources regulated under the Watershed General
248 Virginia Pollutant Discharge Elimination System Permit issued pursuant to § 62.1-44.19:14. The Board
249 shall adopt regulations for the purpose of establishing procedures for the certification of nonpoint source
250 nutrient credits.

251 B. Regulations adopted pursuant to this section shall:

252 1. Establish procedures for the certification and registration of credits, including:

253 a. Certifying credits that may be generated from effective nutrient controls or removal practices,
254 including activities associated with the types of facilities or practices historically regulated by the Board,
255 such as water withdrawal and treatment and wastewater collection, treatment, and beneficial reuse;

256 b. Certifying credits that may be generated from agricultural and urban stormwater best
257 management practices, use or management of manures, managed turf, land use conversion, stream or
258 wetlands projects, shellfish aquaculture, algal harvesting, and other established or innovative methods of
259 nutrient control or removal, as appropriate;

260 c. Establishing a process and standards for wetland or stream credits to be converted to nutrient
261 credits. Such process and standards shall only apply to wetland or stream credits that were established
262 after July 1, 2005, and have not been transferred or used. Under no circumstances shall such credits be
263 used for both wetland or stream credit and nutrient credit purposes;

264 d. Certifying credits from multiple practices that are bundled as a package by the applicant;

265 e. Prohibiting the certification of credits generated from activities funded by federal or state water
266 quality grant funds other than controls and practices under subdivision ~~B-1~~ a; however, baseline levels
267 may be achieved through the use of such grants;

268 f. Prohibiting the certification of credits generated from activities that include the conversion for
269 offset generation of any parcel of important, prime, or unique farmland that was acquired for the purpose
270 of generating nutrient credits. For purposes of this subdivision, "important farmland," "prime farmland,"
271 and "unique farmland" mean the same as those terms are defined in subsection C of § 3.2-205;

272 g. Establishing a timely and efficient certification process including application requirements, a
273 reasonable application fee schedule not to exceed \$10,000 per application, and review and approval
274 procedures;

275 ~~g.~~ h. Requiring public notification of a proposed nutrient credit-generating entity; and

276 ~~h.~~ i. Establishing a timeline for the consideration of certification applications for land conversion
277 projects. The timeline shall provide that within 30 days of receipt of an application the Department shall,
278 if warranted, conduct a site visit and that within 45 days of receipt of an application the Department shall
279 either determine that the application is complete or request additional specific information from the
280 applicant. A determination that an application for a land conversion project is complete shall not require
281 the Department to issue the certification. The Department shall deny, approve, or approve with conditions
282 an application within 15 days of the Department's determination that the application is complete. When
283 the request for credit release is made concurrently with the application for a land conversion project
284 certification, the concurrent release shall be processed on the same timeline. When the request for credit
285 release is from a previously approved land conversion project, the Department shall schedule a site visit,
286 if warranted, within 30 days of the request and shall deny, approve, or approve with conditions the release
287 within 15 days of the site visit or determination that a site visit is not warranted. The timelines set out in
288 this subdivision shall be implemented prior to adoption of regulations. The Department shall release
289 credits from a land conversion project after it is satisfied that the applicant has met the criteria for release
290 in an approved nutrient reduction implementation plan.

291 2. Establish credit calculation procedures for proposed credit-generating practices, including the
292 determination of:

293 a. Baselines for credits certified under subdivision ~~B~~ 1 a in accordance with any applicable
294 provisions of the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs;

295 b. Baselines established for agricultural practices, which shall be those actions necessary to achieve
296 a level of reduction assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or
297 approved TMDLs as implemented on the tract, field, or other land area under consideration;

298 c. Baselines for urban practices from new development and redevelopment, which shall be in
299 compliance with postconstruction nutrient loading requirements of the Virginia Stormwater Management
300 Program regulations. Baselines for all other existing development shall be at a level necessary to achieve
301 the reductions assigned in the urban sector in the Virginia Chesapeake Bay TMDL Watershed
302 Implementation Plan or approved TMDLs;

303 d. Baselines for land use conversion, which shall be based on the pre-conversion land use and the
304 level of reductions assigned in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan or
305 approved TMDLs applicable to that land use;

306 e. Baselines for other nonpoint source credit-generating practices, which shall be based on the
307 Virginia Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs using the best
308 available scientific and technical information;

309 f. Unless otherwise established by the Board, for certification within the Chesapeake Bay
310 Watershed a credit-generating practice that involves land use conversion, which shall represent controls
311 beyond those in place as of July 1, 2005. For other waters for which a TMDL has been approved, the
312 practice shall represent controls beyond those in place at the time of TMDL approval;

313 g. Baseline dates for all other credit-generating practices, which shall be based on the Virginia
314 Chesapeake Bay TMDL Watershed Implementation Plan or approved TMDLs; and

315 h. Credit quantities, which shall be established using the best available scientific and technical
316 information at the time of certification;

317 3. Provide certification of credits on an appropriate temporal basis, such as annual, term of years,
318 or perpetual, depending on the nature of the credit-generating practice. A credit shall be certified for a
319 term of no less than 12 months;

320 4. Establish requirements to reasonably assure the generation of the credit depending on the nature
321 of the credit-generating activity and use, such as legal instruments for perpetual credits, operation and

322 maintenance requirements, and associated financial assurance requirements. Financial assurance
323 requirements may include letters of credit, escrows, surety bonds, insurance, and where the credits are
324 used or generated by a locality, authority, utility, sanitation district, or permittee operating an MS4 or a
325 point source permitted under this article, its existing tax or rate authority;

326 5. Establish appropriate reporting requirements;

327 6. Provide for the ability of the Department to inspect or audit for compliance with the
328 requirements of such regulations;

329 7. Provide that the option to acquire nutrient credits for compliance purposes shall not eliminate
330 any requirement to comply with local water quality requirements;

331 8. Establish a credit retirement requirement whereby five percent of nonpoint source credits in the
332 Chesapeake Bay Watershed other than controls and practices under subdivision-B 1 a are permanently
333 retired at the time of certification pursuant to this section for the purposes of offsetting growth in
334 unregulated nutrient loads; and

335 9. Establish such other requirements as the Board deems necessary and appropriate.

336 C. Prior to the adoption of such regulations, the Board shall certify (i) credits that may be generated
337 from effective nutrient controls or removal practices, including activities associated with the types of
338 facilities or practices historically regulated by the Board, such as water withdrawal and treatment and
339 wastewater collection, treatment, and beneficial reuse, on a case-by-case basis using the best available
340 scientific and technical information and (ii) credits that are located in tributaries outside of the Chesapeake
341 Bay watershed as defined in § 62.1-44.15:35, using an average of the nutrient removal rates for each
342 practice identified in Appendix A of the Department's document "Trading Nutrient Reductions from
343 Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for
344 Agricultural Landowners and Your Potential Trading Partners. "

345 D. The Department shall establish and maintain an online Virginia Nutrient Credit Registry of
346 credits as follows:

347 1. The registry shall include all nonpoint source credits certified pursuant to this article and may
348 include point source nitrogen and point source phosphorus credits generated from point sources covered

349 by the general permit issued pursuant to § 62.1-44.19:14 or point source nutrient credits certified pursuant
350 to this section at the option of the owner. No other credits shall be valid for compliance purposes.

351 2. Registration of credits on the registry shall not preclude or restrict the right of the owner of such
352 credits from transferring the credits on such commercial terms as may be established by and between the
353 owner and the regulated or unregulated party acquiring the credits.

354 3. The Department shall establish procedures for the listing and tracking of credits on the registry,
355 including but not limited to (i) notification of the availability of new nutrient credits to the locality where
356 the credit-generating practice is implemented at least five business days prior to listing on the registry to
357 provide the locality an opportunity to acquire such credits at fair market value for compliance purposes
358 and (ii) notification that the listing of credits on the registry does not constitute a representation by the
359 Board or the owner that the credits will satisfy the specific regulatory requirements applicable to the
360 prospective user's intended use and that the prospective user is encouraged to contact the Board for
361 technical assistance to identify limitations, if any, applicable to the intended use.

362 4. The registry shall be publicly accessible without charge.

363 E. The owner or operator of a nonpoint source nutrient credit-generating entity that fails to comply
364 with the provisions of this section shall be subject to the enforcement and penalty provisions of § 62.1-
365 44.19:22.

366 F. Nutrient credits from stormwater nonpoint nutrient credit-generating facilities in receipt of a
367 Nonpoint Nutrient Offset Authorization for Transfer letter from the Department prior to July 1, 2012, shall
368 be considered certified nutrient credits and shall not be subject to further certification requirements or to
369 the credit retirement requirement under subdivision B 8. However, such facilities shall be subject to the
370 other provisions of this article, including registration, inspection, reporting, and enforcement.

371 **2. That the Department of Environmental Quality shall, by December 31, 2022, report to the**
372 **Governor and the Chairmen of the House Committee on Agriculture, Chesapeake and Natural**
373 **Resources and the Senate Committee on Agriculture, Conservation and Natural Resources on the**
374 **nutrient credit trading program from its beginning to the present. Such report shall detail (i) the**
375 **total number of nutrient credits generated, (ii) the identities of the purchasers of nutrient credits,**

376 (iii) the location of the development mitigated by any given nutrient credit, (iv) the location and
377 prior use of any land acquired to create any given credit repository, and (v) the frequency with
378 which land is acquired for the purpose of nutrient credit trading outside of the eight-digit hydrologic
379 unit code, as defined by the U.S. Geological Survey, in which the development occurs.

380 #