

1 SENATE BILL NO. 963

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources

4 on January 31, 2023)

5 (Patron Prior to Substitute--Senator Morrissey)

6 A BILL to amend and reenact § 62.1-44.19:14 of the Code of Virginia, relating to South Central
7 Wastewater Authority; watershed general permit for nutrients.

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

9 **1. That § 62.1-44.19:14 of the Code of Virginia is amended and reenacted as follows:**

10 **§ 62.1-44.19:14. Watershed general permit for nutrients.**

11 A. The Board shall issue a Watershed General Virginia Pollutant Discharge Elimination System
12 Permit, hereafter referred to as the general permit, authorizing point source discharges of total nitrogen
13 and total phosphorus to the waters of the Chesapeake Bay and its tributaries. Except as otherwise provided
14 in this article, the general permit shall control in lieu of technology-based, water quality-based, and best
15 professional judgment, interim or final effluent limitations for total nitrogen and total phosphorus in
16 individual Virginia Pollutant Discharge Elimination System permits for facilities covered by the general
17 permit where the effluent limitations for total nitrogen and total phosphorus in the individual permits are
18 based upon standards, criteria, waste load allocations, policy, or guidance established to restore or protect
19 the water quality and beneficial uses of the Chesapeake Bay or its tidal tributaries.

20 B. This section shall not be construed to limit or otherwise affect the Board's authority to establish
21 and enforce more stringent water quality-based effluent limitations for total nitrogen or total phosphorus
22 in individual permits where those limitations are necessary to protect local water quality. The exchange
23 or acquisition of credits pursuant to this article shall not affect any requirement to comply with such local
24 water quality-based limitations.

25 C. The general permit shall contain the following:

26 1. Waste load allocations for total nitrogen and total phosphorus for each permitted facility
27 expressed as annual mass loads, including reduced waste load allocations where applicable under the
28 ENRC Program. The allocations for each permitted facility shall reflect the applicable individual water
29 quality-based total nitrogen and total phosphorus waste load allocations. An owner or operator of two or
30 more facilities located in the same tributary may apply for and receive an aggregated waste load allocation
31 for total nitrogen and an aggregated waste load allocation for total phosphorus for multiple facilities
32 reflecting the total of the water quality-based total nitrogen and total phosphorus waste load allocations
33 established for such facilities individually;

34 2. A schedule requiring compliance with the combined waste load allocations for each tributary as
35 soon as possible taking into account (i) opportunities to minimize costs to the public or facility owners by
36 phasing in the implementation of multiple projects; (ii) the availability of required services and skilled
37 labor; (iii) the availability of funding from the Virginia Water Quality Improvement Fund as established
38 in § 10.1-2128, the Virginia Water Facilities Revolving Fund as established in § 62.1-225, and other
39 financing mechanisms; (iv) water quality conditions; and (v) other relevant factors. Following receipt of
40 the compliance plans required by subdivision C 3, the Board shall reevaluate the schedule taking into
41 account the information in the compliance plans and the factors in this subdivision, and may modify the
42 schedule as appropriate;

43 3. A requirement that the permittees shall either individually or through the Association submit
44 compliance plans to the Department for approval. The compliance plans shall contain, at a minimum, any
45 capital projects and implementation schedules needed to achieve total nitrogen and phosphorus reductions
46 sufficient to comply with the individual and combined waste load allocations of all the permittees in the
47 tributary. The compliance plans may rely on the exchange of point source credits in accordance with this
48 article, but not the acquisition of credits through payments authorized by § 62.1-44.19:18, to achieve
49 compliance with the individual and combined waste load allocations in each tributary. The compliance
50 plans shall be updated annually and submitted to the Department no later than February 1 of each year.
51 The compliance plans due beginning February 1, 2023, shall address the requirements of the ENRC
52 Program;

53 4. Such monitoring and reporting requirements as the Board deems necessary to carry out the
54 provisions of this article;

55 5. A procedure that requires every owner or operator of a facility authorized by a Virginia Pollutant
56 Discharge Elimination System permit to discharge 100,000 gallons or more per day, or an equivalent load,
57 directly into tidal waters, or 500,000 gallons or more per day, or an equivalent load, directly into nontidal
58 waters, to secure general permit coverage by filing a registration statement with the Department within a
59 specified period after each effective date of the general permit. The procedure shall also require any owner
60 or operator of a facility authorized by a Virginia Pollutant Discharge Elimination System permit to
61 discharge 40,000 gallons or more per day, or an equivalent load, directly into tidal or nontidal waters to
62 secure general permit coverage by filing a registration statement with the Department at the time he makes
63 application with the Department for a new discharge or expansion that is subject to an offset or technology-
64 based requirement in § 62.1-44.19:15, and thereafter within a specified period of time after each effective
65 date of the general permit. The procedure shall also require any owner or operator of a facility with a
66 discharge that is subject to an offset requirement in subdivision A 5 of § 62.1-44.19:15 to secure general
67 permit coverage by filing a registration statement with the Department prior to commencing the discharge
68 and thereafter within a specified period of time after each effective date of the general permit. The general
69 permit shall provide that any facility authorized by a Virginia Pollutant Discharge Elimination System
70 permit and not required by this subdivision to file a registration statement shall be deemed to be covered
71 under the general permit at the time it is issued, and shall file a registration statement with the Department
72 when required by this section. Owners or operators of facilities that are deemed to be permitted under this
73 section shall have no other obligation under the general permit prior to filing a registration statement and
74 securing coverage under the general permit based upon such registration statement;

75 6. A procedure for efficiently modifying the lists of facilities covered by the general permit where
76 the modification does not change or otherwise alter any waste load allocation or delivery factor adopted
77 pursuant to the Water Quality Management Planning Regulation (9VAC25-720) or its successor, or an
78 applicable total maximum daily load. The procedure shall also provide for modifying or incorporating

79 new waste load allocations or delivery factors, including the opportunity for public notice and comment
80 on such modifications or incorporations; and

81 7. Such other conditions as the Board deems necessary to carry out the provisions of this chapter
82 and § 402 of the federal Clean Water Act (33 U.S.C. § 1342).

83 D. 1. The Board shall (i) review during the year 2020 and every 10 years thereafter the basis for
84 allocations granted in the Water Quality Management Planning Regulation (9VAC25-720) and (ii) as a
85 result of such decennial reviews propose for inclusion in the Water Quality Management Planning
86 Regulation (9VAC25-720) either the reallocation of unneeded allocations to other facilities registered
87 under the general permit or the reservation of such allocations for future use.

88 2. For each decennial review, the Board shall determine whether a permitted facility has:

89 a. Changed the use of the facility in such a way as to make discharges unnecessary, ceased the
90 discharge of nutrients, and become unlikely to resume such discharges in the foreseeable future; or

91 b. Changed the production processes employed in the facility in such a way as to render impossible,
92 or significantly to diminish the likelihood of, the resumption of previous nutrient discharges.

93 3. Beginning in 2030, each review also shall consider the following factors for municipal
94 wastewater facilities:

95 a. Substantial changes in the size or population of a service area;

96 b. Significant changes in land use resulting from adopted changes to zoning ordinances or
97 comprehensive plans within a service area;

98 c. Significant establishment of conservation easements or other perpetual instruments that are
99 associated with a deed and that restrict growth or development;

100 d. Constructed treatment facility capacity;

101 e. Significant changes in the understanding of the water chemistry or biology of receiving waters
102 that would reasonably result in unused nutrient discharge allocations over an extended period of time;

103 f. Significant changes in treatment technologies that would reasonably result in unused nutrient
104 discharge allocations over an extended period of time;

105 g. The ability of the permitted facility to accommodate projected growth under existing nutrient
106 waste load allocations; and

107 h. Other similarly significant factors that the Board determines reasonably to affect the allocations
108 granted.

109 The Board shall not reduce allocations based solely on voluntary improvements in nutrient removal
110 technology.

111 E. The Board shall maintain and make available to the public a current listing, by tributary, of all
112 permittees and permitted facilities under the general permit, together with each permitted facility's total
113 nitrogen and total phosphorus waste load allocations, and total nitrogen and total phosphorus delivery
114 factors.

115 F. Except as otherwise provided in this article, in the event that there are conflicting or duplicative
116 conditions contained in the general permit and an individual Virginia Pollutant Discharge Elimination
117 System permit, the conditions in the general permit shall control.

118 G. The Board shall adopt amendments to the Water Quality Management Planning Regulation and
119 modifications to Virginia Pollutant Discharge Elimination System permits or registration lists to establish
120 and implement the Phase III Watershed Implementation Plan Enhanced Nutrient Removal Certainty
121 Program (ENRC Program) as provided in this subsection. The ENRC Program shall consist of the
122 following projects and the following waste load allocation reductions and their respective schedules for
123 compliance.

124 1. Priority projects for additional nitrogen and phosphorus removal (schedule for compliance):

a	PROJECT NAME	DESCRIPTION (COMPLIANCE SCHEDULE)
b	HRSD-Chesapeake/Elizabeth STP	Consolidate into regional system and close treatment facility (1/1/2023)
c	HRSD-Boat Harbor WWTP	Convey by subaqueous crossing to Nansemond River WWTP for nutrient removal (1/1/2026)

- d HRSD-Nansemond River WWTP Upgrade and expand with nutrient removal technology of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2032)
- e HRSD-Nassawadox WWTP Convey to regional system for nutrient removal (1/1/2026)
- f Fredericksburg WWTF Expand with nutrient removal technology of 3.0 mg/L total nitrogen and 0.22 mg/L total phosphorus (1/1/2026)
- g Spotsylvania Co.-FMC WWTF Convey to Massaponax WWTF and close treatment facility (1/1/2026)
- h Spotsylvania Co.-Massaponax WWTF Expand with nutrient removal technology of 4.0 mg/L total nitrogen and 0.30 mg/L total phosphorus to consolidate and close FMC WWTF (1/1/2026)
- i Spotsylvania Co.-Thornburg STP Upgrade with nutrient removal technology of 4.0 mg/L total nitrogen and 0.30 mg/L total phosphorus (1/1/2026)
- j HRRSA-North River WWTP Phosphorus removal tertiary filtration upgrade (1/1/2026)
- k South Central Wastewater Authority WWTF Upgrade with nutrient removal technology of 4.0 mg/L total nitrogen and 0.30 mg/L total phosphorus (1/1/2026)

- l HRSD-Williamsburg WWTP Upgrade with nutrient removal technology of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2032)
- m HRSD-VIP WWTP Upgrade with nutrient removal technology of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2032)
- n HRSD-James River WWTP Upgrade with nutrient removal technology of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2028)
- o HRSD-Army Base WWTP Convey to VIP WWTP for nutrient removal (1/1/2032) or upgrade with nutrient removal technology of 4.0 mg/L total nitrogen (1/1/2026) and 0.30 mg/L total phosphorus (1/1/2032)

125 Each priority project and the associated schedule of compliance shall be incorporated into the
126 applicable Virginia Pollutant Discharge Elimination System permit or registration list. Each priority
127 project facility shall be in compliance (i) by complying with applicable annual average total nitrogen and
128 total phosphorus concentrations for compliance years 2026, 2028, and 2032; (ii) for the South Central
129 Wastewater Authority WWTF, by implementing a phased construction program approved by the
130 Department, and acquiring sufficient point source credits until its phased construction is completed as
131 provided in this subsection; or, (iii) only for a facility subject to an aggregated waste load allocation, by
132 exercising the option of achieving an equivalent discharged load by the date set out in the schedule of
133 compliance based on the applicable total nitrogen and total phosphorus annual average concentrations and
134 actual annual flow treated without the acquisition and use of point source credits generated by permitted

135 facilities not under common ownership. Noncompliance shall be enforceable in the same manner as any
136 other condition of a Virginia Pollutant Discharge Elimination System permit.

137 The following requirements shall apply to the phased construction program to upgrade the South
138 Central Wastewater Authority WWTF: (a) by August 1, 2023, the South Central Wastewater Authority
139 (SCWWA) shall submit a phased construction program to the Department, which shall review and approve
140 such program by September 1, 2023, or as soon as possible thereafter;(b) by December 31, 2023, or within
141 150 days of approval by the Department of the phased construction program, whichever is later, SCWWA
142 shall commence construction of the initial phase of construction; (c) by February 1, 2024, and annually
143 thereafter, SCWWA shall submit a progress report to the Department describing its progress toward
144 completing the phased construction program; (d) within 30 days of substantial completion of each major
145 phase of construction, SCWWA shall submit an application for a certificate to operate to the Department
146 and promptly place the associated treatment units into operation; (e) the phased construction program for
147 the SCWWA WWTF priority project shall be completed as soon as possible on the schedule approved by
148 the Department but no later than January 1, 2030; and (f) for each compliance year during the phased
149 construction program that the facility does not achieve the nutrient removal technology concentration
150 specified in this subsection, the SCWWA WWTF shall be responsible for acquiring sufficient point source
151 credits to comply with its total nitrogen and total phosphorus waste load allocations applicable to that
152 compliance year.

153 2. Nitrogen waste load allocation reductions — HRSD-York River WWTP:

154 Reduce the total nitrogen waste load allocation for the HRSD-York River WWTP to 228,444
155 lbs/year effective January 1, 2026.

156 3. James River HRSD SWIFT nutrient upgrades:

157 Reduce total nitrogen waste load allocations for HRSD treatment works in the James River basin
158 to the following allocations effective January 1, 2026:

a	FACILITY NAME	TOTAL NITROGEN WASTELOAD ALLOCATION
b		(lbs/year)

c	HRSD-Army Base WWTP	219,307
d	HRSD-Boat Harbor STP	304,593
e	HRSD-James River STP	243,674
f	HRSD-VIP WWTP	487,348
g	HRSD-Nansemond STP	365,511
h	HRSD-Williamsburg STP	274,133

159 Reduce total phosphorus waste load allocations for HRSD treatment works in the James River
160 basin to the following allocations effective January 1, 2026:

a	FACILITY NAME	TOTAL PHOSPHORUS WASTELOAD
		ALLOCATION
b		(lbs/year)
c	HRSD-Army Base WWTP	27,413
d	HRSD-Boat Harbor STP	38,074
e	HRSD-James River STP	30,459
f	HRSD-VIP WWTP	60,919
g	HRSD-Nansemond STP	45,689
h	HRSD-Williamsburg STP	34,267

161 Reduce total phosphorus waste load allocations for HRSD treatment works in the James River
162 basin to the following allocations effective January 1, 2030:

a	FACILITY NAME	TOTAL PHOSPHORUS WASTELOAD
		ALLOCATION
b		(lbs/year)
c	HRSD-Army Base WWTP	21,931
d	HRSD-Boat Harbor STP	30,459
e	HRSD-James River STP	24,367
f	HRSD-VIP WWTP	48,735
g	HRSD-Nansemond STP	36,551

h HRSD-Williamsburg STP 27,413

163 Reduce total phosphorus waste load allocations for HRSD treatment works in the James River
164 basin to the following allocations effective January 1, 2032:

a	FACILITY NAME	TOTAL PHOSPHORUS WASTELOAD	ALLOCATION
b			(lbs/year)
c	HRSD-Army Base WWTP		16,448
d	HRSD-Boat Harbor STP		22,844
e	HRSD-James River STP		18,276
f	HRSD-VIP WWTP		36,551
g	HRSD-Nansemond STP		27,413
h	HRSD-Williamsburg STP		20,560

165 Transfer the total nitrogen (454,596 lbs/year) and total phosphorus (41,450 lbs/year) waste load
166 allocations for the HRSD-Chesapeake/Elizabeth STP to the Nutrient Offset Fund effective January 1,
167 2026.

168 Transfer the total nitrogen (153,500 lbs/yr) and total phosphorous (17,437 lbs/yr) waste load
169 allocations for the HRSD-J.H. Miles Facility consolidation to HRSD in accordance with the approved
170 registration list December 21, 2015, transfer.

171 **2. That the Department of Environmental Quality, concurrently with its approval of the phased**
172 **construction program for the upgrade of the South Central Wastewater Authority Wastewater**
173 **Treatment Facility listed in subdivision G 1 of § 62.1-44.19:14 of the Code of Virginia, as amended**
174 **by this act, shall execute corresponding amendments to the water quality improvement agreement**
175 **pursuant to § 10.1-2131 of the Code of Virginia consistent with the scope and schedule of the**
176 **approved phased construction program.**

177 **3. That the Department of Environmental Quality, by December 31, 2023, or as soon as possible**
178 **thereafter, shall modify the Virginia Pollutant Discharge Elimination System permit for the South**
179 **Central Wastewater Authority Wastewater Treatment Facility as listed in subdivision G 1 of § 62.1-**

180 44.19:14 of the Code of Virginia, as amended by this act, to include the requirements and compliance
181 schedule established in this act.

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