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SENATE BILL NO. 355

Senate Amendments in [] - February 3, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 10.1-1186.01 and 62.1-44.19:14 of the Code of Virginia, relating to Enhanced Nutrient Removal Certainty Program; Fredericksburg wastewater treatment facility.

Patrons Prior to Engrossment—Senators Stuart and Dunnavant; Delegates: Durant and Scott, P.A.

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 10.1-1186.01 and 62.1-44.19:14 of the Code of Virginia are amended and reenacted as follows:

§ 10.1-1186.01. Reimbursements to localities for upgrades to treatment works.

A. As used in this section, "Enhanced Nutrient Removal Certainty Program" or "ENRC Program" means the same as that term is defined in § 62.1-44.19:13.

B. The General Assembly shall fund grants to finance the reasonable costs of design and installation of nutrient removal technology at the publicly owned treatment works designated as significant dischargers contained in subsection F or as eligible nonsignificant dischargers as defined in § 10.1-2117. When grant disbursements pursuant to this section reach a sum sufficient to fund the completion of the ENRC Program at all publicly owned treatment works, the House Committee on Agriculture, Chesapeake and Natural Resources, the House Committee on Appropriations, the Senate Committee on Agriculture, Conservation and Natural Resources, and the Senate Committee on Finance and Appropriations shall review (i) the future funding needs to meet the purposes of the Water Quality Improvement Act, (ii) the most recent annual needs estimate required by § 10.1-2134.1, and (iii) the appropriate funding mechanism for such needs.

C. The disbursement of grants for the design and installation of nutrient removal technology at those publicly owned treatment works included in subsection F and eligible nonsignificant dischargers shall be made monthly based on a requisition submitted by the grant recipient in the form requested by the Department. Each requisition shall include written certification that the applicable local share of the cost of nutrient removal technology for that portion of the project covered by such requisition has been incurred or expended. Except as may otherwise be approved by the Department, disbursements shall not exceed 95 percent of the total grant amount until satisfactory completion of the project. The distribution of the grants shall be effected by one of the following methods:

1. In payments to be paid by the State Treasurer out of funds appropriated to the Water Quality Improvement Fund pursuant to § 10.1-2131;

2. Over a specified time through a contractual agreement entered into by the Treasury Board and approved by the Governor, on behalf of the Commonwealth, and the locality or public service authority undertaking the design and installation of nutrient removal technology, such payments to be paid by the State Treasurer out of funds appropriated to the Treasury Board; or

3. In payments to be paid by the State Treasurer upon request of the Director out of proceeds from bonds issued by the Virginia Public Building Authority, in consultation with the Department, pursuant to §§ 2.2-2261, 2.2-2263, and 2.2-2264, including the Commonwealth's share of the interest costs expended by the locality or regional authority for financing such project during the period from 50 percent completion of construction to final completion of construction.

D. The General Assembly has the sole authority to determine whether disbursement shall be made pursuant to subdivision C 1, 2, or 3, or a combination thereof, provided that a disbursement shall be made pursuant to subdivision C 3 only upon a certification by the Department that project grant reimbursements for the fiscal year will exceed the available funds in the Water Quality Improvement Fund.

E. Exclusive of any deposits made pursuant to § 10.1-2128, the grants awarded pursuant to this section shall include such appropriations as provided from time to time in the appropriation act or any amendments thereto.

F. The disbursement of grants to finance the costs of design and installation of nutrient removal technology, including eligible design and installation costs for implementation of the ENRC Program, at the following listed publicly owned treatment works and other eligible nonsignificant dischargers shall be provided pursuant to the distribution methodology included in § 10.1-2131. The notation "WIP3-N" or "WIP3-P" indicates that a facility is subject to additional requirements for total nitrogen or total phosphorus, respectively, under the ENRC Program. In no case shall any publicly owned treatment

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SB355E

59 works receive a grant of less than 35 percent of the costs of the design and installation of nutrient
60 removal technology.

61	FACILITY NAME	OWNER
62	Shenandoah - Potomac River Basin	
63	ACSA-Fishersville STP	Augusta County Service Authority
64	Luray STP	Town of Luray
65	ACSA-Middle River Regional STP	Augusta County Service Authority
66	HRRSA-North River WWTF WIP3-P	Harrisonburg-Rockingham Regional Sewer Authority
67	ACSA-Stuarts Draft STP	Augusta County Service Authority
68	Waynesboro STP	City of Waynesboro
69	ACSA-Weyers Cave STP	Augusta County Service Authority
70	Berryville STP	Town of Berryville
71	Front Royal STP	Town of Front Royal
72	Mount Jackson STP	Town of Mount Jackson
73	New Market STP	Town of New Market
74	Shenandoah Co.-North Fork Regional WWTP	Shenandoah County
75	Stoney Creek Sanitary District STP	Stoney Creek Sanitary District
76	Strasburg STP	Town of Strasburg
77	Woodstock STP	Town of Woodstock
78	FWSA-Opequon Water Reclamation Facility	Frederick-Winchester Service Authority
79	FWSA-Parkins Mill WWTF	Frederick-Winchester Service Authority
80	Purcellville-Basham Simms WWTF	Town of Purcellville
81	LCSA-Broad Run WRF	Loudoun County Service Authority
82	Leesburg WPCF	Town of Leesburg
83	Round Hill WWTP	Town of Round Hill
84	PWCSA-H.L. Mooney WWTF	Prince William County Service Authority
85	Upper Occoquan Sewage Authority WWTP	Upper Occoquan Sewage Authority
86	FCW&SA-Vint Hill WWTF	Fauquier County Water and Sewer Authority
87	Alexandria Sanitation Authority WWTP	Alexandria Sanitation Authority
88	Arlington Co. WPCF	Arlington County
89	Fairfax Co. Noman-Cole	Fairfax County
90	Pollution Control Facility	
91	Stafford Co.-Aquia WWTP	Stafford County
92	Colonial Beach STP	Town of Colonial Beach
93	Dahlgren Sanitary District WWTP	King George County Service Authority
94	Fairview Beach STP	King George County Service Authority
95	Purkins Corner WWTP	King George County Service Authority
96	District of Columbia - Blue Plains STP (Virginia	Loudoun County Service Authority and Fairfax County
97	portion)	contract for capacity and Fairfax County contract for
98		capacity
99	Rappahannock River Basin	
100	Culpeper WWTP	Town of Culpeper
101	Marshall WWTP	Town of Marshall
102	Mountain Run WWTP	Culpeper County
103	Orange STP	Town of Orange
104	Rapidan STP	Rapidan Service Authority
105	FCW&SA-Remmington WWTP	Fauquier County Water and Sewer Authority
106	Warrenton STP	Town of Warrenton
107	Wilderness Shores WWTP	Rapidan Service Authority
108	Spotsylvania Co.-FMC WWTF	Spotsylvania County
109	Fredericksburg WWTF WIP3-N, WIP3-P	City of Fredericksburg
110	Stafford Co.-Little Falls Run WWTF	Stafford County
111	Spotsylvania Co.-Massaponax WWTF WIP3-N,	Spotsylvania County
112	WIP3-P	
113	Montross-Westmoreland WWTP	Westmoreland County
114	Oakland Park STP	King George County Service Authority
115	Tappahannock WWTP	Town of Tappahannock
116	Urbanna WWTP	Hampton Roads Sanitation District
117	Warsaw STP	Town of Warsaw
118	Reedville Sanitary District WWTP	Reedville Sanitary District60
119	Kilmarnock WWTP	Town of Kilmarnock
120	York River Basin	
121	Caroline Co. Regional STP	Caroline County
122	Gordonsville STP	Rapidan Service Authority
123	Ashland WWTP	Hanover County
124	Doswell WWTP	Hanover County
125	HRSD-York River STP WIP3-N	Hampton Roads Sanitation District
126	Parham Landing WWTP	New Kent County

127	Totopotomoy WWTP	Hanover County
128	HRSD-West Point STP	Hampton Roads Sanitation District
129	HRSD-Mathews Courthouse STP	Hampton Roads Sanitation District
130	Spotsylvania Co.-Thornburg STP WIP3-N,	Spotsylvania County
131	WIP3-P	
132	James River Basin	
133	Buena Vista STP	City of Buena Vista
134	Covington STP	City of Covington
135	Lexington-Rockbridge Regional WQCF	Maury Service Authority
136	Alleghany Co.-Low Moor STP	Alleghany County
137	Alleghany Co.-Lower Jackson River WWTP	Alleghany County
138	Amherst-Rutledge Creek WWTP	Town of Amherst
139	Lynchburg STP	City of Lynchburg
140	RWSA-Moores Creek Regional STP	Rivanna Water and Sewer Authority
141	Crewe WWTP	Town of Crewe
142	Farmville WWTP	Town of Farmville
143	Chesterfield Co.-Falling Creek WWTP	Chesterfield County
144	Henrico Co. WWTP	Henrico County
145	Hopewell Regional WWTF	City of Hopewell
146	Chesterfield Co.-Proctors Creek WWTP	Chesterfield County
147	Richmond WWTP	City of Richmond
148	South Central Wastewater Authority WWTF	South Central Wastewater Authority
149	WIP3-N, WIP3-P	
150	HRSD-Boat Harbor STP WIP3-N, WIP3-P	Hampton Roads Sanitation District
151	HRSD-Williamsburg STP WIP3-N, WIP3-P	Hampton Roads Sanitation District
152	HRSD-Nansemond STP WIP3-N, WIP3-P	Hampton Roads Sanitation District
153	HRSD-Army Base STP WIP3-N, WIP3-P	Hampton Roads Sanitation District
154	HRSD-Virginia Initiative Plant STP WIP3-N,	Hampton Roads Sanitation District
155	WIP3-P	
156	HRSD-Chesapeake/Elizabeth STP WIP3-N,	Hampton Roads Sanitation District
157	WIP3-P	
158	Eastern Shore Basin	
159	Cape Charles WWTP	Town of Cape Charles
160	Onancock WWTP	Town of Onancock
161	Tangier Island WWTP	Town of Tangier

162 G. To the extent that any publicly owned treatment works receives less than the grant specified
 163 pursuant to § 10.1-2131, any year-end revenue surplus or unappropriated balances deposited in the Water
 164 Quality Improvement Fund, as required by § 10.1-2128, shall be prioritized in order to augment the
 165 funding of those projects for which grants have been prorated. Any additional reimbursements to these
 166 prorated projects shall not exceed the total reimbursement amount due pursuant to the formula
 167 established in subsection E of § 10.1-2131.

168 H. Notwithstanding the provisions of subsection B of § 10.1-2131, the Director shall not be required
 169 to enter into a grant agreement with a facility designated as a significant discharger or eligible
 170 nonsignificant discharger if the Director determines that the use of nutrient credits in accordance with
 171 the Chesapeake Bay Watershed Nutrient Credit Exchange Program (§ 62.1-44.19:12 et seq.) would be
 172 significantly more cost-effective than the installation of nutrient controls for the facility in question.

173 **§ 62.1-44.19:14. Watershed general permit for nutrients.**

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

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

189 C. The general permit shall contain the following:

190 1. Waste load allocations for total nitrogen and total phosphorus for each permitted facility expressed
 191 as annual mass loads, including reduced waste load allocations where applicable under the ENRC

Program. The allocations for each permitted facility shall reflect the applicable individual water quality-based total nitrogen and total phosphorus waste load allocations. An owner or operator of two or more facilities located in the same tributary may apply for and receive an aggregated waste load allocation for total nitrogen and an aggregated waste load allocation for total phosphorus for multiple facilities reflecting the total of the water quality-based total nitrogen and total phosphorus waste load allocations established for such facilities individually;

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

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

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

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

6. A procedure for efficiently modifying the lists of facilities covered by the general permit where the modification does not change or otherwise alter any waste load allocation or delivery factor adopted pursuant to the Water Quality Management Planning Regulation (9VAC25-720) or its successor, or an applicable total maximum daily load. The procedure shall also provide for modifying or incorporating new waste load allocations or delivery factors, including the opportunity for public notice and comment on such modifications or incorporations; and

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

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

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

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

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

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

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

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

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

d. Constructed treatment facility capacity;

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

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

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

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

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

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

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

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

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

PROJECT NAME	DESCRIPTION (COMPLIANCE SCHEDULE)
HRSD-Chesapeake/Elizabeth STP	Consolidate into regional system and close treatment facility (1/1/2023)
HRSD-Boat Harbor WWTP	Convey by subaqueous crossing to Nansemond River WWTP for nutrient removal (1/1/2026)
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)
HRSD-Nassawadox WWTP	Convey to regional system for nutrient removal (1/1/2026)
Fredericksburg WWTF	Expand with nutrient removal technology of [4.0 3.0] mg/L total nitrogen and [0.30 0.22] mg/L total phosphorus (1/1/2026)
Spotsylvania Co.-FMC WWTF	Convey to Massaponax WWTF and close treatment facility (1/1/2026)
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)
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)
HRRSA-North River WWTP	Phosphorus removal tertiary filtration upgrade (1/1/2026)
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)
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)
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)
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)
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)

Each priority project and the associated schedule of compliance shall be incorporated into the

applicable Virginia Pollutant Discharge Elimination System permit or registration list. Each priority project facility shall be in compliance by complying with applicable annual average total nitrogen and total phosphorus concentrations for compliance years 2026, 2028, and 2032 or, only for a facility subject to an aggregated waste load allocation, by exercising the option of achieving an equivalent discharged load by the date set out in the schedule of compliance based on the applicable total nitrogen and total phosphorus annual average concentrations and actual annual flow treated without the acquisition and use of point source credits generated by permitted facilities not under common ownership. Noncompliance shall be enforceable in the same manner as any other condition of a Virginia Pollutant Discharge Elimination System permit.

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

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

3. James River HRSD SWIFT nutrient upgrades:

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

FACILITY NAME	TOTAL NITROGEN WASTELOAD ALLOCATION (lbs/year)
HRSD-Army Base WWTP	219,307
HRSD-Boat Harbor STP	304,593
HRSD-James River STP	243,674
HRSD-VIP WWTP	487,348
HRSD-Nansemond STP	365,511
HRSD-Williamsburg STP	274,133

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

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

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

FACILITY NAME	TOTAL PHOSPHORUS WASTELOAD ALLOCATION (lbs/year)
HRSD-Army Base WWTP	21,931
HRSD-Boat Harbor STP	30,459
HRSD-James River STP	24,367
HRSD-VIP WWTP	48,735
HRSD-Nansemond STP	36,551
HRSD-Williamsburg STP	27,413

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

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

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

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

[2. That the nutrient technology requirements of 3.0 mg/L total nitrogen and 0.22 mg/L total phosphorus for the Fredericksburg Waste Water Treatment Facility established in the first enactment clause of this act shall take effect and apply on an annual basis when the expanded Fredericksburg Waste Water Treatment Facility receives its certificate to operate.]