



## **State Issues Notice of Intended Rulemaking on Nutrient Allocations December 2019**

On November 25, 2019, the State published a Notice of Intended Rulemaking (NOIRA), with accompanying documents, in the *Virginia Register* announcing an upcoming regulatory proceeding that will serve three purposes:

1. establishing TN and TP waste load allocations to meet revised chlorophyll-a water quality criteria in the tidal James River basin;
2. reallocating unneeded allocations from significant industrial dischargers to other dischargers regulated under the Watershed General Permit and reserving any unneeded allocations for future use; and
3. establishing floating wasteload allocations for significant municipal dischargers based on “average daily flow treated by the facility in a given year and nutrient concentrations of 4.0 mg/l TN and 0.30 mg/l TP” (i.e., the Phase III WIP issue discussed above).

According to the NOIRA, municipal facilities will keep their existing allocations, but will be required to meet “the lesser of the primary or floating allocations.” The NOIRA mentions the possibility that the State may consider either no floating WLAs or alternative WLAs for some facilities with special circumstances, the possible exemption of “a subset of the smallest significant dischargers” from the regulatory action, and some special considerations for treatment plants that engage in reuse for a “significant portion of their wastewater flow.” The Board also reserves the right to make changes to the Watershed General Permit “if necessary to implement amendments to the Water Quality Management Planning Regulation.”

The State will be taking public comments on the NOIRA through Thursday, January 9, 2020. The State has specifically requested feedback on the proposed regulatory action, including any comments on specific wastewater treatment facilities that should be given “special circumstances” under the proposal, recommendations for alternative actions that “may achieve the same desired level of nutrient reductions,” the costs and benefits associated with the alternatives in the Agency Background Document or other recommended alternatives, and the “overall impacts of the proposed regulatory action.” With regard to the alternative actions referenced in the Agency Background document, the Board notes its consideration of two alternatives to the floating WLAs proposed in the NOIRA. First, the Board considered technology-based effluent limitations that would require municipal dischargers that have not undertaken nutrient upgrades to do so to meet a 4.0 mg/l TN and 0.30 mg/l TP concentration, but determined that this more certain avenue for reductions would be “the most expensive alternative.” Second, the Board considered reductions from voluntary upgrades “as well as reductions generated by incentive payments made by the Commonwealth to the wastewater sector.” The Board concluded that this option would require legislative and regulatory changes and funding,



and ultimately rejected it because “the reductions from this approach may not be completed in time to meet the nutrient reduction goals of the Phase III WIP nor provide the regulatory certainty desired under the Chesapeake Bay TMDL.”

In terms of next steps, the State will be holding a public hearing, although a date has not yet been set. Lastly, the State will be convening a regulatory advisory panel (RAP) to assist the Board in developing a regulatory proposal. Anyone interested in serving on the RAP should submit their name, address, phone number, e-mail address, and the organization represented by the end of the public comment period to the department contact person. In this case, that is Gary Graham, 111 East Main Street, Suite 1400, P.O. Box 1105, Richmond, VA 21218, [gary.graham@deq.virginia.gov](mailto:gary.graham@deq.virginia.gov).