

# (Chesapeake Bay) Watershed Nutrient Credit Exchange

This Act establishes a nutrient exchange or trading program to allow point source dischargers to achieve and maintain compliance with the waste load cap allocations for nitrogen and phosphorus delivered to the Chesapeake Bay and its tidal tributaries. It requires the state Water Control Board to issue a general permit under a state Pollutant Discharge Elimination System to eligible point source dischargers of nitrogen and phosphorus. The facilities that obtain such a permit, and which are interested in participating in the trading program, must be identified with their individual load cap allocations and trading ratios.

A trading association authorized by the bill provides the mechanism by which those permittees under the general permit are matched with nutrient trading partners. Within nine months of the issuance of the general permit, the permittees either individually or through the trading association, must submit compliance plans to the state department of environmental quality. The compliance plans must include any capital projects and implementation schedules to achieve the nitrogen and phosphorus reductions to comply with the waste load allocations for all the permittees in a particular tributary.

Submitted as:

Virginia

Chapter 710 of 2005

Status: Enacted into law in 2005.

## Suggested State Legislation

(Title, enacting clause, etc.)

1           Section 1. [*Short Title.*] This Act shall be cited as a “Watershed Nutrient Credit Exchange  
2 Program.”

3  
4           Section 2. [*Definitions.*] As used in this Act:

5           “Annual mass load of total nitrogen” (expressed in pounds per year) means the daily total  
6 nitrogen concentration (expressed as mg/L to the nearest 0.01 mg/L) multiplied by the flow  
7 volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest 0.01  
8 MGD), multiplied by 8.34 and rounded to the nearest whole number to convert to pounds per day  
9 (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo) units,  
10 and then totaled for the calendar year to convert to pounds per year (lbs/yr) units.

11           “Annual mass load of total phosphorus” (expressed in pounds per year) means the daily  
12 total phosphorus concentration (expressed as mg/L to the nearest 0.01mg/L) multiplied by the  
13 flow volume of effluent discharged during the 24-hour period (expressed as MGD to the nearest  
14 0.01 MGD) multiplied by 8.34 and rounded to the nearest whole number to convert to pounds per  
15 day (lbs/day) units, then totaled for the calendar month to convert to pounds per month (lbs/mo)  
16 units, and then totaled for the calendar year to convert to pounds per year (lbs/yr) units.

17           “Association” means the [Nutrient Credit Exchange Association] authorized by this Act.

18           “Attenuation” means the rate at which nutrients are reduced through natural processes  
19 during transport in water.

20           “Biological nutrient removal technology” means (i) technology that will achieve an annual  
21 average total nitrogen effluent concentration of eight milligrams per liter and an annual average

22 total phosphorus effluent concentration of one milligram per liter, or (ii) equivalent reductions in  
23 loads of total nitrogen and total phosphorus through the recycle or reuse of wastewater as  
24 determined by the [Department].

25 “Board” means the [State Water Control Board] as established by [insert citation].

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

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

30 “Delivery factor” means an estimate of the number of pounds of total nitrogen or total  
31 phosphorus delivered to tidal waters for every pound discharged from a permitted facility, as  
32 determined by the specific geographic location of the permitted facility, to account for attenuation  
33 that occurs during riverine transport between the permitted facility and tidal waters. Delivery  
34 factors shall be calculated using the [Chesapeake Bay Program Watershed model].

35 “Department” means the [Department of Environmental Quality].

36 “Equivalent load” means 2,300 pounds per year of total nitrogen and 300 pounds per year  
37 of total phosphorus at a flow volume of 40,000 gallons per day; 5,700 pounds per year of total  
38 nitrogen and 760 pounds per year of total phosphorus at a flow volume of 100,000 gallons per  
39 day; and 28,500 pounds per year of total nitrogen and 3,800 pounds per year of total phosphorus  
40 at a flow volume of 500,000 gallons per day.

41 “Facility” means a point source discharging or proposing to discharge total nitrogen or  
42 total phosphorus to the [Chesapeake Bay] or its tributaries. This term does not include confined  
43 animal feeding operations, discharges of stormwater, return flows from irrigated agriculture, or  
44 vessels.

45 “General Permit” means the [General Permit] authorized by this Act.

46 “Permitted facility” means a facility authorized by the [General Permit] to discharge total  
47 nitrogen or total phosphorus.

48 “Permittee” means a person authorized by the [General Permit] to discharge total nitrogen  
49 or total phosphorus.

50 “Point source nitrogen credit” means the difference between (i) the waste load allocation  
51 for a permitted facility specified as an annual mass load of total nitrogen, and (ii) the monitored  
52 annual mass load of total nitrogen discharged by that facility, where clause (ii) is less than clause  
53 (i), and where the difference is adjusted by the applicable delivery factor and expressed as pounds  
54 per year of delivered total nitrogen load.

55 “Point source phosphorus credit” means the difference between (i) the waste load  
56 allocation for a permitted facility specified as an annual mass load of total phosphorus, and (ii)  
57 the monitored annual mass load of total phosphorus discharged by that facility, where clause (ii)  
58 is less than clause (i), and where the difference is adjusted by the applicable delivery factor and  
59 expressed as pounds per year of delivered total phosphorus load.

60 “Pollutant Discharge Elimination System Permit” means a permit authorized by [insert  
61 citation].

62 “State-of-the-art nutrient removal technology” means (i) technology that will achieve an  
63 annual average total nitrogen effluent concentration of three milligrams per liter and an annual  
64 average total phosphorus effluent concentration of 0.3 milligrams per liter, or (ii) equivalent load  
65 reductions in total nitrogen and total phosphorus through recycle or reuse of wastewater as  
66 determined by the [Department].

67 “Tributaries” means those river basins for which separate tributary strategies were  
68 prepared pursuant to [insert citation] and includes the [Potomac, Rappahannock, York, and James  
69 River Basins, and the Eastern Coastal Basin, which encompasses the creeks and rivers of the  
70 Eastern Shore of Virginia that are west of Route 13 and drain into the Chesapeake Bay].

71 “Waste load allocation” means (i) the water quality-based annual mass load of total  
72 nitrogen or annual mass load of total phosphorus allocated to individual facilities pursuant to the  
73 [insert citation], (ii) the water quality-based annual mass load of total nitrogen or annual mass  
74 load of total phosphorus acquired pursuant to [Section 4] of this Act for new or expanded  
75 facilities, or (iii) applicable total nitrogen or total phosphorus total maximum daily loads to  
76 restore or protect the water quality and beneficial uses of the [Chesapeake Bay or its tidal  
77 tributaries].

78  
79 Section 3. *[Watershed General Permit for Nutrients.]*

80 A. By [insert date] or as soon thereafter as possible, the [state Water Control Board] shall  
81 issue a [General Watershed Pollutant Discharge Elimination System Permit], hereafter referred to  
82 as the [General Permit], authorizing point source discharges of total nitrogen and total phosphorus  
83 to the waters of the [Chesapeake Bay and its tributaries]. Except as otherwise provided in this  
84 Act, the [General Permit] shall control in lieu of technology-based, water quality-based, and best  
85 in professional judgment, interim or final effluent limitations for total nitrogen and total  
86 phosphorus in [Individual Pollutant Discharge Elimination System Permits] for facilities covered  
87 by the [General Permit] where the effluent limitations for total nitrogen and total phosphorus in  
88 the individual permits are based upon standards, criteria, waste load allocations, policy, or  
89 guidance established to restore or protect the water quality and beneficial uses of the [Chesapeake  
90 Bay or its tidal tributaries].

91 B. This section shall not be construed to limit or otherwise affect the [Board’s] authority  
92 to establish and enforce more stringent water quality-based effluent limitations for total nitrogen  
93 or total phosphorus in individual permits where those limitations are necessary to protect local  
94 water quality. The exchange or acquisition of credits pursuant to this Act shall not affect any  
95 requirement to comply with such local water quality-based limitations.

96 C. The [General Permit] shall contain the following:

97 1. Waste load allocations for total nitrogen and total phosphorus for each permitted  
98 facility expressed as annual mass loads. The allocations for each permitted facility shall reflect  
99 the applicable individual water quality-based total nitrogen and total phosphorus waste load  
100 allocations. An owner or operator of two or more facilities located in the same tributary may  
101 apply for and receive an aggregated waste load allocation for total nitrogen and an aggregated  
102 waste load allocation for total phosphorus for multiple facilities reflecting the total of the water  
103 quality-based total nitrogen and total phosphorus waste load allocations established for such  
104 facilities individually;

105 2. A schedule requiring compliance with the combined waste load allocations for  
106 each tributary as soon as possible taking into account (i) opportunities to minimize costs to the  
107 public or facility owners by phasing in the implementation of multiple projects; (ii) the  
108 availability of required services and skilled labor; (iii) the availability of funding from a [Water  
109 Quality Improvement Fund] as established in [insert citation], a [Water Facilities Revolving  
110 Fund] as established in [insert citation] and other financing mechanisms; (iv) water quality  
111 conditions; and (v) other relevant factors. Following receipt of the compliance plans required by  
112 subdivision C 3, the [Board] shall reevaluate the schedule taking into account the information in  
113 the compliance plans and the factors in this subdivision, and may modify the schedule as  
114 appropriate;

115 3. A requirement that within [nine months after] the initial effective date of the  
116 [General Permit], the permittees shall either individually or through the [Association] submit  
117 compliance plans to the [Department] for approval. The compliance plans shall contain, at a  
118 minimum, any capital projects and implementation schedules needed to achieve total nitrogen and  
119 phosphorus reductions sufficient to comply with the individual and combined waste load  
120 allocations of all the permittees in the tributary. The compliance plans may rely on the exchange

121 of point source credits in accordance with this Act, but not the acquisition of credits through  
122 payments authorized by Section 7 of this Act, to achieve compliance with the individual and  
123 combined waste load allocations in each tributary. The compliance plans shall be updated  
124 annually and submitted to the [Department] no later than [February 1] of each year;

125 4. Such monitoring and reporting requirements as the [Board] deems necessary to carry  
126 out the provisions of this Act;

127 5. A procedure that requires every owner or operator of a facility authorized by a  
128 [Pollutant Discharge Elimination System Permit] to discharge 100,000 gallons or more per day,  
129 or an equivalent load, directly into tidal waters, or 500,000 gallons or more per day, or an  
130 equivalent load, directly into nontidal waters, to secure [General Permit] coverage by filing a  
131 registration statement with the [Department] within a specified period after each effective date of  
132 the [General Permit]. The procedure shall also require any owner or operator of a facility  
133 authorized by a [Pollutant Discharge Elimination System Permit] to discharge 40,000 gallons or  
134 more per day, or an equivalent load, directly into tidal or nontidal waters to secure [General  
135 Permit] coverage by filing a registration statement with the [Department] at the time he makes  
136 application with the [Department] for a new discharge or expansion that is subject to an offset or  
137 technology-based requirement in Section 4 of this Act, and thereafter within a specified period of  
138 time after each effective date of the [General Permit]. The [General Permit] shall provide that any  
139 facility authorized by a [Pollutant Discharge Elimination System Permit] and not required by this  
140 subdivision to file a registration statement shall be deemed to be covered under the [General  
141 Permit] at the time it is issued, and shall file a registration statement with the [Department] when  
142 required by this section. Owners or operators of facilities that are deemed to be permitted under  
143 this section shall have no other obligation under the [General Permit] prior to filing a registration  
144 statement and securing coverage under the [General Permit] based upon such registration  
145 statement;

146 6. A procedure for efficiently modifying the lists of facilities covered by the  
147 [General Permit] where the modification does not change or otherwise alter any waste load  
148 allocation or delivery factor adopted pursuant to a [Water Quality Management Planning  
149 Regulation] as defined under [insert citation] or its successor, or an applicable total maximum  
150 daily load. The procedure shall also provide for modifying or incorporating new waste load  
151 allocations or delivery factors, including the opportunity for public notice and comment on such  
152 modifications or incorporations; and

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

155 D. The [Board] shall maintain and make available to the public a current listing, by  
156 tributary, of all permittees and permitted facilities under the [General Permit], together with each  
157 permitted facility's total nitrogen and total phosphorus waste load allocations, and total nitrogen  
158 and total phosphorus delivery factors.

159 E. Except as otherwise provided in this Act, in the event that there are conflicting or  
160 duplicative conditions contained in the [General Permit] and an individual [Pollutant Discharge  
161 Elimination System Permit], the conditions in the [General Permit] shall control.

162

#### 163 Section 4. *[New or Expanded Facilities.]*

164 A. An owner or operator of a new or expanded facility shall comply with the applicable  
165 requirements of this section as a condition of the facility's coverage under the [General Permit].

166 1. An owner or operator of a facility authorized by a [Pollutant Discharge  
167 Elimination System Permit] first issued before [July 1, 2005], that expands his facility to  
168 discharge [100,000 gallons or more] per day, or an equivalent load directly into tidal waters, or  
169 [500,000 gallons or more] per day, or an equivalent load, directly into nontidal waters shall  
170 demonstrate to the [Department] that he has acquired waste load allocations sufficient to offset

171 any increase in his delivered total nitrogen and delivered total phosphorus loads resulting from  
172 any expansion beyond his waste load allocations or permitted design capacity as of [July 1, 2005],  
173 and will install state-of-the-art nutrient removal technology at the time of the expansion.

174 2. An owner or operator of a facility authorized by a [Pollutant Discharge  
175 Elimination System Permit] first issued before [July 1, 2005], that expands his facility to  
176 discharge [100,000 gallons or more] per day up to and including [499,999 gallons] per day, or an  
177 equivalent load, directly into nontidal waters, shall demonstrate to the [Department] that he has  
178 acquired waste load allocations sufficient to offset any increase in his delivered total nitrogen and  
179 delivered total phosphorus loads resulting from any expansion beyond his permitted capacity as  
180 of [July 1, 2005], and will install, at a minimum, biological nutrient removal technology at the  
181 time of the expansion.

182 3. An owner or operator of a facility authorized by a [Pollutant Discharge  
183 Elimination System Permit] first issued before [July 1, 2005], that expands his facility to  
184 discharge [40,000 gallons] or more per day up to and including [99,999 gallons] per day, or an  
185 equivalent load, directly into tidal or nontidal waters, shall demonstrate to the [Department] that  
186 he has acquired waste load allocations sufficient to offset any increase in his delivered total  
187 nitrogen and delivered total phosphorus loads resulting from any expansion beyond his permitted  
188 capacity as of [July 1, 2005].

189 4. An owner or operator of a facility authorized by a [Pollutant Discharge  
190 Elimination System Permit] first issued on or after [July 1, 2005], to discharge [40,000 gallons] or  
191 more per day, or an equivalent load, shall demonstrate to the [Department] that he has acquired  
192 waste load allocations sufficient to offset his delivered total nitrogen and delivered total  
193 phosphorus loads, and will install at a minimum, biological nutrient removal technology at any  
194 facility authorized to discharge up to and including [99,999 gallons] per day, or an equivalent  
195 load, directly into tidal and nontidal waters, or up to and including [499,999 gallons] per day, or  
196 an equivalent load, to nontidal waters; and state-of-the-art nutrient removal technology at any  
197 facility authorized to discharge [100,000 gallons] or more per day, or an equivalent load, directly  
198 into tidal waters, or [500,000 gallons] or more per day, or an equivalent load, directly into  
199 nontidal waters.

200 B. Waste load allocations required by this section to offset new or increased delivered  
201 total nitrogen and delivered total phosphorus loads shall be acquired in accordance with this  
202 subsection.

203 1. Such allocations may be acquired from one or a combination of the following:

204 a. Acquisition of all or a portion of the waste load allocations from [one] or  
205 more permitted facilities in the same tributary;

206 b. Acquisition of nonpoint source load allocations through the use of best  
207 management practices acquired through a public or private entity acting on behalf of the land  
208 owner. Such best management practices shall achieve reductions beyond those already required  
209 by or funded under federal or state law, or [state] tributaries strategies plans, and shall be installed  
210 in the same tributary in which the new or expanded facility is located and included as conditions  
211 of the facility's [Pollutant Discharge Elimination System Permit]; or

212 c. Acquisition of allocations in accordance with the terms of the [General  
213 Permit] or through such other means as may be approved by the [Department] on a case-by-case  
214 basis.

215 2. The [Board] shall give priority to allocations acquired in accordance with  
216 subdivisions B 1 a and B 1 b. The [Board] shall approve allocations acquired in accordance with  
217 subdivision B 1 c only after the owner or operator has demonstrated that he has made a good faith  
218 effort to acquire sufficient allocations in accordance with subdivisions B 1 a and B 1 b and that  
219 such allocations are not reasonably available taking into account timing, cost, and other relevant  
220 factors.

221 C. Until such time as the [Board] finds that no allocations are reasonably available in an  
222 individual tributary, the [General Permit] shall provide for the acquisition of allocations through  
223 payments into the [Water Quality Improvement Fund] established under [insert citation]. Such  
224 payments shall be promptly applied to achieve equivalent point or nonpoint source reductions in  
225 the same tributary beyond those reductions already required by or funded under federal or state  
226 law or the [state] tributaries strategies plans. The [General Permit] shall base the cost of each  
227 pound of allocation on the estimated cost of achieving a reduction of one pound of nitrogen or  
228 phosphorus at the facility that is securing the allocation, or comparable facility, for each pound of  
229 allocation acquired; or the average cost of reducing two pounds of nitrogen or phosphorus from  
230 nonpoint sources in the same tributary for each pound of allocation acquired, whichever is higher.  
231 Upon each reissuance of the [General Permit], the [Board] may adjust the cost of each pound of  
232 allocation based on current costs and cost estimates.

233  
234 Section 5. *[Technology-Based Standards and Effluent Limitations.]*

235 A. The [Board] may establish a technology-based standard less stringent than the  
236 applicable standard specified in [Section 4] of this Act based on a demonstration by an owner or  
237 operator that the specified standard is not technically or economically feasible for the affected  
238 facility or that the technology-based standard would require the owner or operator to construct  
239 treatment facilities not otherwise necessary to comply with his waste load allocation without  
240 reliance on nutrient credit exchanges pursuant to [Section 7] of this Act.

241 B. The [Board] may include technology-based effluent concentration limitations in the  
242 individual permit for any facility that has installed technology for the control of nitrogen and  
243 phosphorus whether by new construction, expansion, or upgrade. Such limitations shall be based  
244 upon the technology installed by the facility and shall be expressed as annual average limitations.  
245 Such limitations shall not affect the generation, acquisition, or exchange of allocations or credits  
246 pursuant to this Act.

247  
248 Section 6. *[Nutrient Credit Exchange Association Authorized; Duties; Composition;*  
249 *Appointment; Terms]*

250 A. The permittees under the [General Permit] may establish a nonstock corporation under  
251 [insert citation], to be known as the state [Nutrient Credit Exchange Association], to coordinate  
252 and facilitate participation in the nutrient credit exchange program by its members. The [Nutrient  
253 Credit Exchange Association], which is hereafter referred to as the Association, may (i) submit on  
254 behalf of the permittees the compliance plans required by [Section 7] of this Act, (ii) develop a  
255 standard form of agreement for use by permittees when buying and selling nitrogen and  
256 phosphorus allocations and credits, (iii) assist permittees in identifying buyers and sellers of  
257 nitrogen and phosphorus allocations and credits, (iv) coordinate planning to ensure that to the  
258 extent possible, sufficient credits are available each year to achieve full compliance with the  
259 [General Permit], (v) assist individual municipal permittees in using public-private partnerships  
260 and other innovative measures to achieve the State's water quality goals, and (vi) perform such  
261 other duties and functions as may be necessary to the effective and efficient implementation of  
262 the credit exchange program. The Association shall not assume any of the permittees' compliance  
263 obligations under the [General Permit].

264 B. Only permittees under the [General Permit] may become members of the Association.  
265 The Association shall operate through a [board of directors], which shall consist of 10 members  
266 and be representative of the membership in the Association. Association [board] members shall  
267 be employees of Association members, shall be elected by the Association membership at the  
268 beginning of each term of the [General Permit], and shall serve through the end of the permit term  
269 to which they were elected. Vacancies for unexpired Association [board] terms shall be filled in  
270 the same manner in which members are originally elected to the Association [board].

271 C. The Association [board] shall elect a president, vice president, secretary, and treasurer  
272 from among its members at the beginning of each permit term. Officers and Association [board]  
273 members shall receive no compensation for their services as officers and [board] members of the  
274 Association.

275  
276 Section 7. *[Nutrient Allocation Compliance and Reporting.]*

277 A. Each permitted facility shall be in compliance with its individual waste load allocations  
278 if: (i) its annual mass load is less than the applicable waste load allocation assigned to the facility  
279 in the [General Permit]; (ii) the permitted facility acquires sufficient point source nitrogen or  
280 phosphorus credits in accordance with subdivision A 1; or (iii) in the event it is unable to meet the  
281 individual waste load allocation pursuant to clauses (i) or (ii), the permitted facility acquires  
282 sufficient nitrogen or phosphorus credits through payments made in accordance with subdivision  
283 A 2; provided, however, that the acquisition of nitrogen or phosphorus credits pursuant to this  
284 section shall not alter or otherwise affect the individual waste load allocations for each permitted  
285 facility.

286 1. A permittee may acquire point source nitrogen or phosphorus credits from one  
287 or more permitted facilities only if (i) the credits are generated and applied to a compliance  
288 obligation in the same calendar year, (ii) the credits are generated by one or more permitted  
289 facilities in the same tributary, (iii) the credits are acquired no later than [June 1] immediately  
290 following the calendar year in which the credits are applied, and (iv) no later than [June 1]  
291 immediately following the calendar year in which the credits are applied, the permittee certifies  
292 on a form supplied by the [Department] that he has acquired sufficient credits to satisfy his  
293 compliance obligations.

294 2. A permittee may acquire nitrogen or phosphorus credits through payments made  
295 into a [Water Quality Improvement Fund] established by [insert citation] only if, no later than  
296 [June 1] immediately following the calendar year in which the credits are applied, the permittee  
297 certifies on a form supplied by the [Department] that he has diligently sought, but has been unable  
298 to acquire, sufficient credits to satisfy his compliance obligations through the acquisition of point  
299 source nitrogen or phosphorus credits with other permitted facilities in the same tributary, and  
300 that he has acquired sufficient credits to satisfy his compliance obligations through one or more  
301 payments made in accordance with the terms of the [General Permit].

302 B. Until such time as the [Board] finds that no credits are reasonably available in an  
303 individual tributary, the [General Permit] shall provide for the acquisition of nitrogen and  
304 phosphorus credits through payments into the [Water Quality Improvement Fund] in accordance  
305 with subdivision A. Such payments shall be promptly applied to achieve equivalent point or  
306 nonpoint source reductions in the same tributary beyond those reductions already required by or  
307 funded under federal or state law, or the [state tributaries strategies plans]. The [General Permit]  
308 shall base the cost of each nitrogen or phosphorus credit on the average cost of reducing one  
309 pound of nitrogen or phosphorus from publicly owned wastewater treatment facilities for each  
310 credit acquired. Upon each reissuance of the [General Permit], the [Board] may adjust the cost of  
311 each nitrogen and phosphorus credit based on (i) the current average cost of reducing a pound of  
312 nitrogen or phosphorus from publicly owned wastewater treatment facilities for each credit  
313 acquired and (ii) any additional incentives reasonably necessary to ensure that there is timely and  
314 continuing progress toward attaining and maintaining each tributary's combined waste load  
315 allocation.

316 C. On or before [February 1, annually], each permittee shall either individually or through  
317 the Association file a report with the [Department]. The report shall identify (i) the annual mass  
318 load of total nitrogen and the annual mass load of total phosphorus discharged by each permitted  
319 facility during the previous calendar year, (ii) the delivered total nitrogen load and delivered total  
320 phosphorus load discharged by each permitted facility during the previous year, and (iii) the

321 number of total nitrogen and total phosphorus credits for the previous calendar year to be  
322 purchased or sold by the permittee. The report shall contain the certification required by federal  
323 and state law and be signed by each permittee for each of the permittee's facilities covered by the  
324 [General Permit].

325 D. On or before [April 1, annually], the [Department] shall prepare a report containing the  
326 annual mass load of total nitrogen and annual mass load of total phosphorus discharged by each  
327 permitted facility, the number of point source nitrogen and phosphorus credits for the previous  
328 calendar year for sale or purchase by each such facility, and to the extent there are insufficient  
329 point source credits available for exchange to provide for full compliance by every permittee, the  
330 number of credits to be purchased pursuant to this section. Upon completion of the report, the  
331 [Department] shall promptly publish notice of the report and make the report available to any  
332 person requesting it.

333 E. On or before [July 1, annually], the [Department] shall publish notice of all nitrogen  
334 and phosphorus credit exchanges and purchases for the previous calendar year and make all  
335 documents relating to the exchanges and purchases available to any person requesting them.

336

337 Section 8. [*Program Audits.*]

338 1. In addition to its permit compliance and enforcement authority, the [Department] is  
339 authorized to conduct such audits of the Association and permittees as it deems necessary to  
340 ensure that the reports and data received from permittees and the Association are complete and  
341 accurate. The Association and permittees under the [General Permit] shall cooperate with the  
342 [Department] in the conduct of such audits and provide the [Department] with such information  
343 as the [Department] may require to fulfill its responsibilities under this Act.

344 2. Any rights, claims, or defenses arising out of the [General Permit] authorized under this  
345 Act shall not be applicable to, raised nor asserted in any judicial proceeding, or appeals  
346 therefrom, that relate to [Pollutant Discharge Elimination System Permits] issued by the [Board]  
347 on [June 17, 2004].

348

349 Section 9. [*Severability.*] [Insert severability clause.]

350

351 Section 10. [*Repealer.*] [Insert repealer clause.]

352

353 Section 11. [*Effective Date.*] [Insert effective date.]