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VIA E-MAIL lynn.buhl@maryland.gov

Lynn Buhl
Assistant Secretary
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Re: Comments on draft Nutrient Trading Regulations

Dear Ms. Buhl:

Thank you for the opportunity to provide comments on the initial draft nutrient trading regulations and to participate in the meetings of the Water Quality Trading Advisory Committee ("WQTAC"). The Maryland Industrial Technology Alliance ("MITA") represents a vital component of Maryland's economy as producers of a wide variety of products and transportation services and provides high-paying jobs to thousands of workers throughout Maryland. Our members' products are used in medicines, foods, fertilizers, water treatment, and in the production of automobiles, airplanes, energy and more. MITA members have an interest in both generating and potentially purchasing nutrient credits. MITA supports the development of a robust and fair nutrient trading program that provides the maximum flexibility for the generation and trading of credits to address nutrient loading in the Chesapeake Bay, and that minimizes the obstacles to nutrient trading.

MITA submits the following comments on the draft nutrient trading regulations:

1. **The Availability of Nutrient Trading Should Be as Broad as Possible.** The draft regulations are focused on the use of credits by wastewater point sources and MS4s, but are not clear on how industrial and non-regulated sources would actually generate and/or purchase a credit. Although we understand MDE's desire to minimize the burden on MDE staff by incorporating nutrient trading into the existing permitting framework, we encourage the Department to keep any such permitting scheme as simple as possible. For example, while an individual permit modification for a large MS4 may make sense, MDE could also authorize trading in some of its General Permits (such as the General Permits for stormwater associated with industrial activities and with construction activities) and/or in bubble permits to streamline trading in other situations. Individual credits authorized under a general permit can still be subject to verification, but requiring every single credit purchase to be subject to a permit modification would be unnecessarily burdensome on the trading market.

The regulations should also include catchall provisions to allow parties to propose credits from practices or situations that may not fall neatly into one of the other generator categories and/or leave open the possibility of credit generation and sale outside of an existing permit. For example, a non-regulated person or entity may wish to sell credits to make some money and achieve a voluntary reduction in nutrients. Such credits would still be subject to MDE approval and verification to make sure they are providing nutrient reduction, but would incentivize creativity and innovation in generating credits and make the trading market stronger. We propose an additional subsection (4) under regulation 10.A as follows:

> ***.10 Generation and Acquisition of Credits by Non-Regulated Sources.***
> *A. Non-regulated sources include:*
>
> . . .
>
> *(4) Additional practices and credit-generating activities as approved by the Department.*

Allowing credits from the widest variety of possible sources, including non-agricultural measures, will incentivize preservation practices and will provide the maximum flexibility for the development of creative solutions that can work together in combination to restore the Chesapeake Bay in the most efficient and effective way possible.

2. Excessive Trading Ratios Will Artificially Deflate the Value of Credits. The draft regulations include four types of trading ratios ("delivery, reserve, retirement,[1] and uncertainty") purportedly to reduce risk and uncertainty by adjusting the available credits between a willing seller and a willing buyer. This would result in triple counting the margin of uncertainty and requiring excessive additional credits to be generated and sold in order to accomplish any trade. This is overkill and will unreasonably stifle the credit trading market. The Chesapeake Bay TMDL already has a margin of safety built into it, the delivery ratio and Edge of Segment load designation accounts for a pollutant's travel over land or in water, and the uncertainty ratio provides additional assurance that the claimed pollution reduction is occurring in cases where the science is not certain. A reserve ratio piled on top of these is neither necessary nor desirable. We also believe that uncertainty ratios should not be automatically applied in all cases, but only where their use is warranted because of site-specific factors or uncertainties in the science. In cases where the nutrient reduction from a particular practice is well-established, there is no need for an additional uncertainty ratio.

We propose deleting definition .03.B(41) ("Reserve ratio") and deleting all of subsection E(7) from regulation .04.

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[1] Draft regulation .03.B(49) uses the terms "reserve" and "retirement" ratios; however, the term "retirement" is not defined and does not appear elsewhere in the draft.

3. The Regulations Should Allow for Independent Credit Verification and Modeling of Nutrient Reduction. In addition to MDE or MDA certification of credits, the regulations should allow for parties to propose additional types of credits on a case-by-case basis using an independent verifier. This will encourage innovation for projects that may not fit neatly into one of the predefined categories but maximize the ability to achieve environmental benefits by reducing nutrients. We recommend the following changes to the draft language:

.05 General Policies

. . .

E. Credits may be generated using practices that reduce total nitrogen, total phosphorous, or total suspended solids and are accepted by the Chesapeake Bay Program.

(1) Before a credit is available for purchase it must be certified by ~~the~~:

(a) ***The*** *Department through issuance of a permit;*

(b) ***The*** *Department through its Water Quality Nutrient and Sediment Trading and Offset Program; ~~or~~*

(c) ***The*** *Department of Agriculture through its Nutrient and Sediment Credit Certification Program;* ***or***

(d) An independent verifier, subject to approval by the Department.

The Department could approve individuals to act as verifiers as long as they possess the necessary education, training, skill, and experience to verify and inspect credit generators. This should not be a complicated licensing-type scheme, but simply provide MDE with enough information to have confidence that the verification of nutrient reduction credits is as accurate as possible. Verifiers should not hold an interest in the operation or entity generating the credit.

The regulations also should be clear that credits based on modeling are allowed and should not be limited to benefits measured only from similar practices implemented elsewhere. We propose adding a catchall provision to Regulation .10.C as follows:

.10 Generation and Acquisition of Credits by Non-Regulated Sources.

. . .

C. Credit Determination and Verification.

. . .

(3) Modeling or other verification methods, as approved by the Department.

Allowing this flexibility in credit verification would encourage innovation and creativity in generating credits, making the trading market stronger and more robust.

4. Credit Terms Should Not Be Artificially Limited to One Year. The draft regulations at Page 9, lines 14-24, provide that credits are valid for one calendar year and cannot be banked for future years, except that permanent credits are available in perpetuity. This language is

confusing and is unnecessarily restrictive. Credit terms should be for as many years as the generator can demonstrate they are good for. We propose language similar to the MDA regulations at COMAR 15.20.12.16: "Credits may be certified for more than one year but shall be applied annually." MDE can include as part of the credit registration the number of years a credit is valid.

5. Approved Credits Should Be Placed on the Registry. The draft regulations do not specify how the Registry would work or how credits become available for purchase if they are not included in an individual permit. We recommend adding a new section that provides as follows:

> ***.11 Registration and Trading of Credits***
>
> *A. Upon approval of an application for nutrient and sediment credits, the Department shall assign each credit a unique registration number and provide for their registration on the Registry.*
>
> *B. Any credit listed on the Registry is eligible to be purchased and/or sold at a price determined by the credit seller.*

As you can see, the consistent theme of MITA's comments is to ensure that Maryland's nutrient trading program is as broad as possible to maximize participation opportunities in the program and make it as robust as possible. We look forward to reviewing the next draft of the regulations and would be happy to work with the Department if you have any questions or would like additional recommendations for proposed language.

Thank you again for the opportunity to participate in the development of the nutrient trading program in Maryland.

Very truly yours,

Margaret M. Witherup