

July 7, 2017

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 Building Industry Association (“MBIA”) represents over 1,300 member firms and more than 100,000 employees across the state, including home builders, remodelers, and developers, all of whom significantly contribute to economic development in Maryland. Our members provide homes for families, sustain neighborhoods, and create jobs for Marylanders. MBIA members have an interest in both generating and potentially purchasing nutrient credits.

MBIA supports to development of a fair nutrient trading program that provides the flexibility needed to address nutrient loading in the Chesapeake Bay, while minimizing the obstacles to nutrient trading so our members can continue their work promoting economic development in Maryland.

To that end, MBIA submits the following comments on the draft nutrient trading regulations:

- 1. Definitions.** The draft regulations include four types of trading ratios: delivery, reserve, retirement, and uncertainty. Two of these terms require further definition.
  - The term “retirement” (used in Draft regulation .03.B(49)) is not defined and does not appear elsewhere in the draft. We propose defining the term “Retirement ratio.”
  - The existing definition of “reserve ratio” should mention a third use of reserve: to compensate for failure and/or underperformance of a project.
- 2. Nutrient Trading Should Be Accessible Beyond Local Watershed Regions.** The draft regulations do not state that trading is preferred within each trading region. MBIA agrees that trading should not be limited to a trading region; however, this should be expanded within the draft regulations. Local jurisdictions will likely seek trading opportunities within their local watershed first, as these types of trades will be most protective of local water quality. Providing flexibility to allow for trades to occur outside of the local watershed boundaries is essential to ensure the availability of credits. This flexibility would serve the short-term compliance requirements for MS-4 jurisdictions, while expanding opportunities for our members to participate in the trading program.

- 3. Excessive Trading Ratios Will Artificially Reduce the Inventory of Available Credits.** The purpose of having four types of trading ratios is to reduce risk and uncertainty by adjusting the available credits between a willing seller and a willing buyer. Applying all four ratios, or “stacking” ratios, risks artificially reducing the inventory of available credits. We echo the Maryland Industrial Technology Alliance’s analysis on stacking ratios:

“[Stacking ratios] 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.”

*MITA Comments on draft Nutrient Trading Regulations, July 7, 2017*

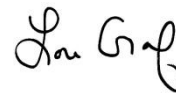
Deleting definition .03.B(41) (“Reserve ratio”) and all of subsection E(7) from regulation .04 is not necessary. Instead, we propose expanding situations in which the reserve ratio can be utilized to a third scenario: to compensate for failure and/or underperformance of a project. We agree with MITA that uncertainty ratios should only be applied because of site-specific factors or uncertainties in the science. However, where nutrient reduction from a particular practice is well established, there is not need for an additional uncertainty ratio. Therefore, it is not necessary for uncertainty ratios to be automatically applied in all cases.

As you can see, MBIA’s comments aim to ensure that Maryland’s nutrient trading program is as clear and broad as possible to maximize participation opportunities. 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.

Please contact me if you have any questions.

Sincerely,



Lori Graf, CEO