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Department of  
Land and Resource Management  
Carroll County Government  
225 North Center Street  
Westminster, Maryland 21157

January 8, 2018

Gary Setzer  
Senior Advisor  
Water and Science Administration  
Maryland Department of the Environment (MDE)  
1800 Washington Boulevard, Suite 440  
Baltimore, Maryland 21230-1708

**Re: Proposed Maryland Water Quality Trading Program Comments**

Dear Mr. Setzer:

Thank you for the opportunity to review and provide comment on the proposed regulation to implement the Maryland Water Quality Trading Program, published in the Maryland Register on December 8, 2017. We would like to offer the following comments.

1. **Non-regulated point source (§.03(33))** – It is not clear what specifically is considered a non-regulated point source. If the whole county, border to border (not that the County agrees with this approach), is under the MS4 permit, it is not clear if this only applies to the permittee or any party within those boundaries.
2. **Limitations (§.04D(3))** – Generation of credits should not be limited to just those BMPs installed after the effective date of this regulation, with the noted exception of BMPs to conform to 12SW permits. Any work completed beyond the baseline should be eligible to generate credits.
3. **Limitations (§.04D(7))** – This appears to indicate that buying credits does not take away any obligation to make actual reductions. If all trades are considered temporary, this should be clearly stated in the regulation.
4. **Baseline requirements (§.05)** – If a county holds a stormwater permit as well as one or more WWTP permits, please clarify that these are considered separate entities for the purpose of trading baseline.
5. **Calculation of credits (§.06B)** – Expand this text further to ensure it is clear that a jurisdiction can use an alternate tool to calculate credits if the tool is accepted by MDE.
6. **Wastewater credit certification (§.07A(2))** – It is not necessary to reopen the permit for this purpose. Therefore, this language does not need to be included.

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**7. Trading requirements (§.08) –**

- ♦ *The costs associated with these requirements here are excessive.* In addition to the credit for the actual reduction, the buyer would also need to pay the cost equivalent of that credit for the uncertainty ratio, plus a minimum of that same cost again for the Edge of Tide (EoT) ratio (possibly much more), plus the reserve ratio. This results in a cost that is actually a minimum of 300% of the cost of the credit itself. While the market may control the cost of the credit for the reduction, MDE is overly inflating the cost through these additional ratio requirements. Excessive costs will significantly discourage participation in the program. The cost should be pound for pound.
- ♦ The language is not clear regarding the process of how the uncertainty and EoT ratios work and how they are applied. Text should be added to clarify if the ratios are actual additional reductions purchased and paid to the seller, or if the ratios are cost equivalents paid to MDE. If they are paid to MDE, or someone other than the seller, where do these funds go and how are they used?
- ♦ *The ratios are based on making up for inaccuracies elsewhere and, therefore, penalize the buyer for inaccuracies in the model, BMPs, etc. The additional ratios are not necessary as the Bay TMDLs already have a 10% margin of safety built into them.*

**8. Credits (§.08B) –** The seller needs to be responsible for the actual BMP/credit generated and sold. The buyer should not be penalized if the seller defaults, as this is beyond the buyer's control. Since the buyer may still be responsible for addressing the credits/reductions needed, a grace period of six months to one year should be given to the buyer to secure replacement credits or install new BMPs if the seller defaults.

**9. Reserve ratio (§.03(43)) and (§.08C(3)) –** It is not clear if a buyer must purchase 5% more than the actual credits needed (so 5% pounds reduced) or if the 5% is taken off another way.

**10. Prohibitions, permittee non-compliance (.08F(1)) and Enforcement (§.13) –**

- ♦ This should not apply to just any permit terms. Rather, *it should be limited to just the impervious surface restoration requirement.* If even the smallest item unrelated to actual restoration, such as paperwork, is out of compliance, a jurisdiction could be ineligible.
- ♦ It should be noted that MS4 permittees have until the end of the five-year permit term to comply with the impervious surface restoration requirement. Therefore, any point prior to the date of the end of the permit term would not be a reasonable basis to determine non-compliance for purposes of generating credits.
- ♦ It would be helpful to clarify that, if a jurisdiction holds more than one type of permit, these permits are considered separately.
- ♦ Please clarify if all the credits generated immediately become invalid if a permittee that has sold credits goes out of compliance, and if this would result in the buyers needing to purchase new credits. Since some violations or non-compliance could be corrected quickly, timeframes should be added for to address non-compliance that is short-term.

**11. Prohibitions, previous violations (§.08F(4)) –** Similar to the prohibition on generating credits in §.08.G(1), prohibiting credit generation based on any previous violation is a very broad reach and would significantly limit those jurisdictions which might be eligible to generate credits. This could include even the most minor infraction. If this provision is meant to apply only to the impervious



surface restoration requirement, it needs to specify so. Regardless, if a person/jurisdiction is compliant now, that person should be eligible to generate credits. This provision should be removed.

12. **Hearing (§.12)** – A hearing is already built into the process of issuing a new permit. There is no need to hold a hearing again to allow the trade if the permit allows trading when it is issued. This requirement should be removed.
13. **Enforcement (§.13)** – A provision should be added which gives a buyer the ability to remove themselves from a contract and purchase credits elsewhere if there are notable compliance issues. While this is partially an issue of the language agreed to in the contract between the buyer and the seller, the trading program process also needs to allow for this to happen.
14. **Enforcement (§.13C(1))** – Add a grace period of six months to one year for the buyer to secure replacement credits or install new BMPs if the seller defaults.

Please feel free to contact Brenda Dinne at [bdinne@ccg.carr.org](mailto:bdinne@ccg.carr.org) or 410-386-2140 if you have any questions regarding our comments or would like to discuss anything further.

Sincerely,

A handwritten signature in dark ink, appearing to read "Thomas S. Devilbiss". The signature is fluid and cursive, with the first name "Thomas" and last name "Devilbiss" clearly distinguishable.

Thomas S. Devilbiss  
Director

C: Brenda Dinne, LRM  
Gale Engles, LRM  
Clay Black, LRM