

Frederick County Comments on MDE Proposed Water Quality Trading Program

Frederick County has reviewed the proposed water quality trading program regulations provided by the Maryland Department of the Environment (MDE) in the Maryland Register on December 8, 2017. The County commends the MDE on their statement of purpose “to establish a trading program that provides greater flexibility and reduces the cost of achieving the total maximum daily loads (TMDLs) established for the Chesapeake Bay while being protective of local water quality”. The County is supportive of developing a trading program for nutrient and sediment credits that will encourage and facilitate the utilization of resources and best management practices (BMPs) to their fullest efficiency potential to reduce loading and protect water quality.

After review and consideration of the proposed program regulations, the County offers the following comments:

Section 26.08.11.04D(5): For the purposes of this chapter, public funding may not be used to generate a credit, except: (a) wastewater treatment plant that accepts BRF funding..., (b) prorating credit for nonagricultural BMPs that use public and nonpublic funding.

This severely limits the amount of credits that can be produced if a permittee does not wish to use nonpublic funding sources to implement the BMP. This can persuade a permittee to use public funding for the cheapest BMP implementable to meet the permit, not the most effective at nutrient and sediment reduction for that situation. The wastewater treatment plant that can be completely operated with public funds would not be allowed to generate credits therefore there is less incentive to operate at a removal efficiency producing the MDE suggested 3 mg/L discharge. In both instances this regulation would prevent the implementation of the most effective means of nutrient and sediment reduction and would not help achieve the goal of the regulations of “reducing the cost of achieving the TMDL” stated by MDE.

Section 26.08.11.05A: All baselines shall be consistent with the 2010 Chesapeake Bay TMDL and any local TMDL as may be amended from time to time.

The County believes this narrative can create uncertainty and instability in targets within a permit cycle. The regulation would need to be clarified where the baseline for being able to create a credit with a BMP is static within a permittee’s permit timeframe. Allocating resources to target a baseline then having it move within the permit cycle to have the effort not be able to meet a new baseline is unfair and can produce uncertainty in obtaining nonpublic funding (see first comment) when trying to obtain grants and partner with NGO’s, etc.

Also, the narrative creates confusion for establishment of the baseline in the referencing of two TMDL’s. A permittee should be held to the permit TMDL. This is outlined in the following notes 26.08.11.05B, C and D. The language should only reference the TMDL baseline the permit is based on.

Section 26.08.11.09C: The Department shall prorate the amount of certified credits generated from any BMP for use in the year the credits are certified, while the total amount of certified credits generated from any BMP are not valid for use until the following year starting January 1.

Clarification is needed on this note for wastewater point source generation. The proposed regulations state the credits generated from a wastewater point source are calculated at the end of the calendar year based on flow and analytical data collected through the year. Since the credits are based on a year of data, why are they being prorated for use in the certification year,

and what is any proration being based on? The County believes a year's worth of above standards performance should be credited for a year.

Section 26.08.11.09F(2): Permits may contain conditions on the use of certified credits, including....When, and from what source, certified credits may be acquired by the permittee.

The County believes this should be determined by these trading regulations, not within the permit. The purpose of these regulations is to set forth the way in which credits can be generated, traded and used. The MDE has accounted for variances among the permittees in the proposed edge of tide factors and ratios, and set forth the when and from what source credits may be acquired in the proposed regulations. Placing additional limits or variations on credits usage within an individual permit creates inconsistency by the regulator and provides a way for regulatory oversight to circumvent the regulations.