

January 8, 2018

Gary Setzer
Senior Advisor
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Re: Comments on Proposed MD Water Quality Trading Program Regulations
44 Md. Reg. 1189-95

Dear Mr. Setzer:

Thank you for the opportunity to provide comments on the Proposed MD Water Quality Trading Program 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 does not support the inclusion of our sector (non-MS4 storm water) in the proposed regulation. In order to participate in the proposed program, the building industry would need to be regulated in order to be able to calculate a baseline from which credits could be generated from. The building industry already significantly contributes to the reduction of nutrient and sediment loads to the bay. In aggregate, when designed and built to modern stormwater management standards, housing development decreases nutrient loads below previous land uses. There is also evidence that, due to this and a variety of other environmental initiatives implemented in the past, as population continues to grow in the State, pollution loads are decreasing. While this is a good thing from an environmental standpoint, these and other regulations impact housing affordability. Further regulation is unnecessary from an environmental standpoint and would only exacerbate the problem of housing affordability.

However, MBIA supports the 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 proposed nutrient trading regulations:

- 1. MBIA Generally Supports the Trading Regulations.** MBIA appreciates the recognition that the excess capacity at WWTPs should not be used to generate credits, since this excess capacity is needed for future growth as projected in 10-year water and sewer master plans. We also support a robust trading program that realizes the cost-effectiveness of implementing cheaper BMPs on agricultural land to offset expensive retrofits in MS4 jurisdictions. Doing so benefits all Marylanders by providing the agricultural industry an additional income opportunity, and by allowing MS4 jurisdictions to

comply with their TMDL goals, while reducing costs at the local level, effectively reducing the cost to taxpayers.

- 2. The Three-Year Verification Requirement.** The Proposed MD Water Quality Trading Program Regulations require that credits be verified at least once every three years. Requiring verification every three years could quickly become onerous. Virginia's trading program allows for perpetual credits: once credits are confirmed by the state, they are ready to be sold and the transaction is complete. Opportunities to generate perpetual credits should be provided.

This raises an additional concern regarding liability. Under the proposed regulations, a credit purchaser permittee could be found in violation of their permit if their purchased credits are found to be functioning improperly. It is the permittee's responsibility to comply with their permit, but should not be held entirely and solely liable if the separate entity that sold the permittee the credits was not fulfilling its duty to the purchaser permittee. Virginia has financial assurance requirements to account for this scenario, but Maryland's proposed regulations do not include those assurances.

- 3. Trading Ratios.** The proposed regulations provide for an uncertainty ratio of 2:1 applied to trades involved credits generated by non-point sources and acquired by wastewater point sources, unless the generator, seller, or buyer of the credit is able to demonstrate to the Department that the lower ratio is justified and protective of water quality standards. The review process by which the buyer can demonstrate to the Department that a lower ratio is justified is not clearly outlined. We echo our previously stated concerns that excessive trading ratios will artificially hamper credit trading.
- 4. Impediments Within Impaired Waters.** Since the proposed regulations provide adjustments to compensate for different rates of pollutant reductions through natural processes, any impediments to credits generated outside any impaired waters being used within the impaired waters should be removed. Furthermore, any impediments to septic hookups to WWTPs should be removed if the septic system is downstream of impaired waters, since such hookups will improve water quality at a different location downstream.

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 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