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1/8/2018

Mr. Gary Setzer, Senior Advisor  
Maryland Department of the Environment  
1800 Washington Blvd.,  
Baltimore, MD 21230

Re: Comments to the Proposed Regulations 26.08.11  
Maryland Water Quality Trading Program

Dear Mr. Setzer,

For 100 years WSSC has stood at the forefront of protecting public health and the environment and delivering quality service to the citizens of Prince George's and Montgomery Counties. Over the past century we have contributed to advancements in effective practices in sanitation and are strongly committed to innovative approaches that meet future challenges. We have an unsurpassed commitment to delivering high levels of service and value to approximately 1.8 million Maryland citizens. We believe that the performance of our wastewater treatment facilities are among the best performing in the Chesapeake Bay region.

We appreciate the commitment and leadership of MDE for promoting water quality trading in Maryland. We believe that water quality trading across source sectors has the potential to provide a cost effective option for credit buyers. We believe that it will take innovative approaches such as water quality trading to deliver the results needed to restore the Bay at a cost that is more affordable than traditional approaches.

However, as a potential credit generator we have some significant concerns with some elements of the proposed regulations and as such cannot support the regulation in its current form. Our major concerns are addressed below:

1. **Performance Baseline for Nitrogen:** We have been following the development of Maryland water quality trading program closely through the involvement of the Maryland Association of Municipal Wastewater Agencies (MAMWA). We were dismayed that MDE retracted the final draft regulations while they were under the initial review by the AELR and without any notification or explanation changed the point source baseline for nitrogen performance from 4 mg/l to 3 mg/l. We strongly object to this change and were afforded no opportunity to present arguments in support of our position before the regulations were revised and sent to AELR.

WSSC, consistent with our firm commitment to protect the environment, operates our treatment plants to achieve outstanding water quality. Some of this enhanced performance is due to the fact that we operate all of our plants' denitrification capacity (which are sized for full design flow) despite the fact that current daily plant flows are less than full plant capacity. This operating strategy, which is

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necessary for practical reasons, provides excellent reduction in total nitrogen today but similar levels of reductions won't be able to be sustained as flows increase due to growth. Statewide, it is our understanding that performance has been quite good which we are sure has influenced MDE in determining the nitrogen baseline but this too is due in part to the fact that plants are operating at less than full design capacity at this time.

Moving the baseline from 4 mg/L to 3 mg/L will disproportionately impact larger plants in the same way that the BRF Operating "Grant" does. For instance, a facility operating at 10 mgd and meeting the performance criteria would be eligible to receive a \$300,000 operating "grant" (~ \$9.86 per pound of TN removed). A large plant operating at 100 mgd that achieves the same performance would get the same \$300,000 which equates to (\$0.98 per pound removed) despite spending substantially more in power and chemicals (methanol). With the previous version of the proposed regulation, a large plant could have forgone the BRF O&M "grant" and earned perhaps \$8-\$10 per pound in the market for performance below 4 mg/l, but now the large plant would need to spend significantly to reach the performance baseline of 3 mg/l and earn the BRF operating "grant" at a fraction of the cost to meet the baseline just for the opportunity to possibly sell credits in a market. Moreover, the cost to perform below 3 mg/l is substantially more expensive per pound removed than the cost to perform between 3 and 4 (as in the law of diminishing returns).

The bottom line is that moving the baseline lower than the WLA (and below the design basis of the wastewater treatment plants) will increase the costs of generating credits and simultaneously reduce the pool of credits that are potentially available further inflating the costs if supply lags the demand.

For these reasons we request that MDE redefine the nitrogen performance baseline for wastewater to 4 mg/l which is the basis for the point source WLA and the design basis for our treatment facilities. Alternatively, in the spirit of compromise, we suggest the plants operating greater than 10 mgd be able to count performance credits based on a 4 mg/l baseline for actual flow above 10 mgd. This would provide incentives for larger plants, potential equity for our customers and create a greater and more stable supply of nitrogen credits.

2. **Exclusion of Out of State Performance (Blue Plains):** WSSC has long contracted with the District of Columbia (now DC Water) for treating a large portion of our wastewater at the Blue Plains WWTP. Currently, approximately 120 mgd is generated within Montgomery and Prince George's Counties and conveyed and treated at the Blue Plains Advanced WWTP under an inter-municipal agreement. Furthermore, Maryland provided a WLA in support of the NPDES permit on behalf of its citizens that are served by Blue Plains and hundreds of millions of dollars in capital investments by WSSC and the BRF and over \$50 million in operating costs are incurred annually for the use of the facility by Maryland citizens. However, the proposed regulations don't allow for any of the plant performance to be counted or used for the benefit of Maryland under the trading program. We request that the Maryland share of actual performance be allowed to be traded by WSSC on behalf of our customers within the Potomac Trading Region under the regulation as a special case.
3. **Prohibition on credit generators:** The language in the regulation is overly broad and could be used to exclude just about any entity from participating for "...previously violating any provision of the Environment Article or any regulation adopted under the Environment Article." As the regulation is written a wastewater utility that has ever had an occurrence of a single sanitary sewer overflow could be excluded from participating in the program. We can understand that MDE must have some authority to determine if an entity should be allowed to participate in the program based on certain criteria including their overall record of environmental compliance, however, this language is far too broad. Therefore, the language should be refined to state the nature, scale and frequency of infraction that would constitute being excluded from participation.

4. **NPDES Permit requirement;** The regulations clearly state that a person who will use water quality credits to meet their permit obligations is subject to terms and conditions of the permit to which the credits apply. Please confirm that WWTPs that are participating in the program as a credit generator don't need permit modifications. The trading model that MDE proposed is based on the trading of performance credits on an annual basis – the credits are only good for the same calendar year they were created in. Because a credit generator can opt in and out of the program in any given year the opening up the permits of the credit generators would be impractical on an annual basis. Because permits limit the amount of load that we can discharge it seems logical that the permit conditions are needed by the buyers of credits (to document their method of complying). But a credit generator shouldn't need permission in a permit to produce an abundance of performance which could aid someone else to meet overall water quality goals.

We thank you for your consideration of our comments and we look forward to hearing from you soon.

Sincerely,



Gary Gumm, P.E.  
Chief Engineer

CC: Joe Matua, WSSC Deputy General Manager  
Thomas Hilton, Division Manager, Planning  
Bob Buglass, Division Manager, Technical Services  
Joel Caudill, Regional Water and Wastewater Manager