

AquaLaw Comments

Trading Guidance Comments

October 13, 2016

Chris Pomeroy <chris@aqualaw.com>

to ed.stone, me, brian.clevenger, lynn.buhl

Ed, thanks for leading the Committee through the Section II Wastewater meeting last week. We thought the meeting was well run and productive and the NPDES permit background presentation and materials were very clear and helpful. Below are written comments (as fast as we could get through them) on the draft. Top interests are Permit Language (Comments 10 and 15), the Minor No-Grant Upgrades (Comment 9), and Retirement Ratio as applied to WWTPs (Comments 3 and 13). The focus below is on Section II Wastewater, but a few Section III Stormwater points are included too (copying Brian). Glad to clarify or discuss any aspect. Thank you. – Chris

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SECTION II WASTEWATER

1. **Background** – It is recognized that MDE has previously issued NPDES permits with trading/offset elements. We support the option of trading and offsets, and continue to recommend that MDE not only maintain these options, but also proceed with the development of methods to support voluntary trades/offsets such as this Guidance Manual.
2. **Key Principles/Meaning of “Capacity”** – Perhaps the greatest source of confusion in the document is the use of the terms “capacity” and “excess capacity” as applied to WWTPs. Capacity has numerous meanings in the WWTP context. The typical meaning is “hydraulic capacity” – the fluid volume of wastewater that the WWTP is designed to convey. Capacity also commonly refers to treatment capacity for the organic mass load (i.e., “BOD capacity”). Capacity can also refer to “nutrient removal capacity” or capability. The hydraulic capacity of the facility is largely fixed, and not affected by nutrient trading. In most cases if not all, we expect that hydraulic capacity would be maintained even if nutrient allocation or credit is traded to a third party. Since capacity is most commonly understood to mean hydraulic capacity, we suggest avoiding use of terms “excess capacity” or trading “capacity.” Instead, the Guidance should use terms such as “available nutrient allocation” or “available nutrient credits” or “capable of producing credits.”
3. **Key Principles/Retirement Ratio Concept** – Request reconsideration of this concept, specifically as applied to WWTP-derived credits for which there is a high degree

of measurement, verification, certification and reporting. (This comment does not apply to other Ratios discussed, only Retirement specifically.)

- a. As the underlying allocations are fully consistent with water quality protection including the Bay TMDL, there is no water quality legal basis for requiring forfeiture of 5% of valid credits. MDE should evaluate whether insisting on retirement is a permissible exaction.
- b. Further, this policy will waste a limited resource (allocation) that is otherwise necessary for activities in society (wastewater management, business growth, etc). Allocation is already scarce and this policy would make it more so. MDE should support economic development and effective offsetting, rather than constrain both by forced retirement of allocation or credits.
- c. If MDE decides to keep this concept – which we urged the agency not to – the Guidance should be clear that temporary trades require temporary retirement. A PERMANENT retirement of WWTP allocation to service TEMPORARY trading needs would effectively halt temporary trading; we don't believe that is the intent of the Guidance but that is how some have interpreted it. Please clarify.

4. **Duration of Credits** – This section should be clarified to indicate that it is speaking to “the acquisition of nutrient credit for new or expanded discharges.” That is an important category of trading activity and we understand the duration issue here (suggest clarifying the current minimum 2 “permit terms” to be more specific as “10 years”). However, it is also only one category. Another category would be compliance trading (e.g., WWTP-derived credit traded to MS4); for this latter category, the presumably temporary duration would be as negotiated by the parties entering into the trade to meet their individual needs.

5. **Flow Management/Examples** – We support the opportunity for voluntary allocation transfers among facilities under common ownership or under a co-permittee bubble. The list of examples, however, is too narrow (e.g., missing Major-to-New-Minor, missing Permittee 1-to-Permittee 2). The examples should be deleted so as not to be interpreted as constraining the types of situations that may be considered.

6. **Flow Management/Language** – In addition, the phrase “redirect flow” should be revised to avoid limiting interpretations; some trades may support good infrastructure decisions (optimizing the mix of hydraulic capacity and nutrient removal performance among multiple facilities) without “redirecting flows” in the sense of constructing pipelines between the various facilities/systems. Suggest replacing “redirect flow” with “assign capacity for treating wastewater flows.”

7. **Trading Baselines/Adequate Supply** – We support the potential to use “capacity based credits” when the trading market “does not meet demand,” but request clarification of “does not REASONABLY meet demand IN A RELIABLE AND COST-EFFECTIVE MANNER.”

8. **Option for Generating and Acquiring Credits/Modeling** – Recommend: “MDE will CONSIDER the potential impact from the proposed discharge [STRIKE MODELING – FAR TO SPECIFIC AS TO THE METHOD BY WHICH MDE WILL

CONSIDER THIS ISSUE; NOT ALWAYS AVAILABLE, NECESSARY OR APPROPRIATE] to determine if ...”

9. Option for Generating and Acquiring Credits/Minor WWTP Upgrades

Without Utilizing State Grants – We support the Guidance’s concept of making the full original allocation (see Retirement Ratio comments below) available for trading, but request elimination of the overly-specific rule limiting how the two trading parties may agree to split the allocation between themselves (the Guidance shows a ceiling on existing minor’s share of allocation of not-to-exceed 6,100 lbs/yr TN and 457 lbs/yr TP).

a. Consider a 0.4 mgd minor upgrading without BRF grant: $0.4 \text{ mgd} \times 18\text{mg/l TN} \times 8.345 \times 365 = 21,930 \text{ lbs/yr}$. If the facility voluntarily upgrades at its expense to a TN performance level of 8 mg/l: $0.4 \text{ mgd} \times 8\text{mg/l TN} \times 8.345 \times 365 = 9,747 \text{ lbs/yr}$. Since the Guidance places a ceiling on resulting WWTP of 6,100 lbs/yr, this desirable upgrade would not make sense and essentially would be precluded by the Guidance – an unfortunate result.

b. Consider a 0.4 mgd minor upgrading without BRF grant: $0.4 \text{ mgd} \times 18\text{mg/l TN} \times 8.345 \times 365 = 21,930 \text{ lbs/yr}$. If the facility voluntarily upgrades at its expense to a TN performance level of 4 mg/l: $0.4 \text{ mgd} \times 4\text{mg/l TN} \times 8.345 \times 365 = 4,873 \text{ lbs/yr}$. The difference ($21,930 - 4,873$) of 17,056 would be available ONLY to the new discharger and not to the existing minor. This is an artificial constraint with serious potential to distort infrastructure development and ownership in undesirable ways. Here are a couple examples:

i. The restriction on how the two parties may divide the allocation will have financial implications for both of them. The upgrade may not make financial sense or facility sense with this artificial division. It could kill good economic development under the allocation for artificial / non-water quality reasons.

ii. The restriction on how allocation the existing minor may retain post-upgrade will likely lead to more, smaller WWTPs, whether owned by the same owner as the existing minor or by other new private or governmental owners that can use the allocation, rather than fewer, larger central plants.

10. WWTP Permit Documentation of Trades

a. MDE’s Oct. 5, 2016 Committee presentation on WWTP discharge permit documentation requirements was comprehensive; it demonstrated the clear existing reporting requirements that will identify credits produced in a transparent, verifiable and enforceable manner.

b. In light of existing documentation requirements including full monitoring and reporting, we continue to question the need for permit modifications to WWTP permits for the limited purpose of generating and trading annual credits for temporary use such as MS4 permit compliance.

c. Assuming MDE continues to require a permit modification based approach, internally inconsistent language in the Guidance must be corrected:

i. We would support the documentation in the permit of “the methodology for determining the number of required credits to be exchanged” (p.26 at 7.3) and “the process by which the trade is calculated” (p.24 at 6.1); this process-based or method-based approach can accommodate the needs of MS4-related trading. We assume this is intended to be consistent with the approach described in Guidance Section III Part 7.

ii. It is important to distinguish Section III Stormwater / Part 7 Verification / Wastewater Point Source Generated Credits (p.32) from Section II Wastewater/ Parts 5.6, 5.7, and 5.8, which should only apply to permanent trades such as to permanently offset a new discharge (“permit modification of the ENR facility’s limits to reflect the corresponding reduction in its allocation” and “permit modification of the ENR facility’s limits and the annual concentration-based loading requirements to reflect corresponding changes” and “the WLA will also be adjusted” and “reductions in nutrient allocations” and similar language throughout these sections); Parts 5.6 – 5.8 are all permanent trade concepts that are inconsistent with the process-based or method-based approach to accommodate temporary trading needs of MS4-related trading discussed in II.6.1, II.7.3 and III.7.

iii. We believe the above requests are fully consistent with MDE’s explanation at the Oct. 5, 2016 meeting as to the role and use of process-based or method-based approaches to WWTP-generated credits used in MS4 trades on an temporary basis; the language we are questioning in Parts 5.6 – 5.8 appears to be residual language from the 2008 Cap Management Strategy that has not been updated to account for MS4-related trading and other temporary trading.

SECTION III STORMWATER

11. **Key Principles/Retirement** – See comment above regarding WWTP-derived credits

12. **Key Principles/Annual Report** – This is an appropriate document for memorializing actual credit use because it is an existing requirement (efficient, not duplicative), an annual requirement (appropriate frequency), and is subject to MDE review (appropriate oversight).

13. **Trading Ratios** – See comment above regarding WWTP-derived credits

14. **Defining Trading Areas** – We continue to be concerned about the recommended hierarchy, primarily because it is not applicable to trading for impervious area restoration and TMDL requirements associated with the far-field Chesapeake Bay TMDL allocations and WIP goals. If not removed, it must remain recommended but not required. If it were a required, it would have a serious market distorting effect by allowing the credit generator in the highest tier to completely control price to the MS4 buyer to the exclusion of more competitive (lower cost to public) credits elsewhere within the jurisdiction, watershed or region, thereby severely curtailing the value of trading and the opportunity to accelerate water quality improvement by decreasing the cost of doing so.

15. **Verification/Wastewater Point Source Generated Credits** – The process / method listed here is generally appropriate. One helpful feature is that it can be tailored to the specific trading situation. We would ask that consideration should be given to deletion of the WWTP permit modification aspect and along this same methodology to be implemented in the MS4 Annual Report (see related comments above).

Chesapeake Bay Commission
Comments



CHESAPEAKE BAY COMMISSION

Policy for the Bay • www.chesbay.us

October 13, 2016

Lynn Buhl, Director

Water Management Administration

Maryland Department of the Environment

1800 Washington Blvd.

Baltimore, MD 21230

Re: Chesapeake Bay Commission (CBC) staff comments on the final draft of the Maryland Trading and Offsets Policy and Guidance Manual, Chesapeake Bay Watershed

Dear Ms. Buhl:

We write to offer comments on the final draft of the Maryland Trading and Offsets Policy and Guidance Manual. But first, we want to thank MDE and MDA for their thoughtful work with the Water Quality Trading Advisory Committee (WQTAC) to develop a comprehensive policy for cross sector trading. It has been an honor to serve on the WQTAC and we appreciate the opportunity to offer input on the final draft guidance.

Before offering comments, we must stress the importance of translating this guidance into regulations to govern trades for non-point sources. These regulations must be aligned with Maryland's agricultural trading regulations. Together, they will provide assurance for credit sellers, buyers, and aggregators while allowing opportunities for stakeholder input.

In the guidance we are pleased to see that “capacity credits” can be traded only among WWTPs and cannot be sold to comply with MS4 permits. However, the guidance allows MDE to approve the sale of capacity credits from ENR WWTPs to MS4s at a later date if the trading market does not meet demand. We do not support this. Capacity credits should stay within the wastewater sector since they do not provide any additional nutrient reductions. If, however, one WWTP wants to trade its capacity to cover another WWTP’s increased load, this should be allowed. This type of “cap management” is acceptable, especially because Maryland’s wastewater sector has already exceeded its TMDL reductions.

EPA measures state compliance with the TMDL by determining whether a state is meeting its total reduction targets for nitrogen, phosphorus and sediment, regardless of sector. For now, regardless of trades, EPA allows for the wastewater sector’s over-performance to cover the stormwater sectors slower performance. But, by 2025 expected growth may bring WWTPs to capacity and the stormwater sector may not be able to depend on unused WWTP capacity to cover its shortfalls. We must continue to encourage progress in the stormwater sector via regulatory, incentive and public-private sector initiatives in order to ensure compliance by 2025. The use of capacity credits to meet stormwater permits will just delay inevitable work that must be done.

In contrast, the use of “performance credits” will allow MS4 jurisdictions to trade for time to meet their permits but will still keep pressure on them to accelerate adoption of stormwater practices. We support their use but recognize that performance credits -- those generated by WWTPs reducing their nutrient discharge concentration levels below their permit level -- are far less available. Nonetheless, this concept of “trading in time” should be added as a key principle in Section III that covers regulated stormwater trading. This concept acknowledges that performance credits allow MS4 jurisdictions to purchase credits to meet their permits, but the jurisdictions must implement stormwater treatment practices within their MS4 boundaries at a later date.

However, to be consistent with the trading policy for agricultural credits, MDE should reconsider how they determine the baseline for generating performance credits. EPA’s technical memorandum, entitled Components of Credit Calculation, said that the trading baseline for major WWTP’s is the permit level included in Phase II WIP’s, which is currently 4 mg/liter for nitrogen. The Bay Restoration Fund paid for WWTP’s to reach a discharge concentration of 3 mg/liter nitrogen. The trading policy for agricultural credits, does not allow sale of nutrient reductions paid for by cost share, so to be consistent, WWTP’s should also not be able to sell nutrients reductions that were paid for by state grants.

The Administration’s proposal to allow MS4 jurisdictions to meet up to one-half of their 20 percent restoration requirement through nutrient trading was reflected clearly in the January 2016 draft guidance document. However, the final guidance document instead states that MS4 jurisdictions can meet “a portion” of their stormwater retrofit obligation by purchasing credits. A “portion” leaves the fraction subject to interpretation. We recommend that the guidance document clearly state the Administration’s policy of “up to one-half.”

We are pleased to see recognition that state programs must align their baselines, standards and methodologies, and that protection of local water quality must be ensured before interstate trading can occur. Should Maryland's program mature to consider interstate trading, we call your attention to our economic study entitled: *Nutrient Credit Trading for the Chesapeake Bay* (May 2012).

Thank you for this opportunity to comment. We look forward to working with you on the development of point source trading regulations and on policies to offset new nutrient and sediment loads.

Sincerely,

Bevin A. Buchheister, MD Director

Chesapeake Bay Foundation
Midshore Riverkeeper Conservancy
Environmental Integrity Project
Maryland Clean Agriculture Coalition
Comments

**Comments on the “Final Draft” of the Maryland
Trading and Offset Policy Guidance Manual
For the Chesapeake Bay Watershed**

October 7, 2016

By Electronic Mail

To: Marya Levelov, Chesapeake Bay Coordinator, Water Management
Division, Maryland Department of the Environment

Lynn Buhl, Director, Water Management Division, Maryland Department of the
Environment

Susan Payne, Ecosystem Markets and Agricultural Certainty Programs
Coordinator, Maryland Department of Agriculture

At the conclusion of the September 22 meeting of the Maryland Water Quality Trading Advisory Committee, Maryland Department of the Environment (MDE) and Maryland Department of Agriculture (MDA) personnel indicated that written comments on substantive issues in the “final draft” trading manual would be welcome if submitted by October 7. In response, we are submitting the below comments.

However, as a general matter, the undersigned believe that this guidance document, or any future iteration, does not and cannot serve as a legally recognizable enactment of a nutrient trading program. As recognized by the Maryland Attorney General, “an agency may not adopt an enforceable trading policy without following the process set out in the APA [Administrative Procedure Act].”¹ Therefore the following comments may not be construed as implicit or explicit agreement that this guidance enacts a nutrient trading program. Furthermore, we question how Maryland can proceed with a nutrient trading program that complies with the Chesapeake Bay TMDL without first setting aside allocations for new or increased pollutant loads, or at the very least adopting regulatory procedures that will ensure that any new or expanded discharges will be properly “offset” by equal or greater reductions in other discharges of the relevant pollutants .2

1. Specify Consistency with EPA Technical Manuals (TMs). On p. 9 the Manual discusses “EPA’s expectations for trading and offset programs” in the Chesapeake Bay states and refers to Section 10 and Appendix S of the Chesapeake Bay TMDL. In the next paragraph the Manual identifies 1 the 8 TMs that EPA has issued which

also set forth EPA's "expectations" for the contents of any Chesapeake Bay states' trading and offset programs.

While the Manual correctly states that these TMs are not regulations and do not have the force of law, the Manual fails to state that Maryland expects that any trading and offset program it develops will be consistent with the TMs. Because EPA has made clear that it expects any program to be consistent with, and incorporate the elements of, the TMs, the Manual should include such a statement here. If Maryland fails to do that, it will run the risk that its trading and offset program will be disapproved by EPA, and that any trades or offsets based on the Maryland policy will be vetoed or objected to by EPA.

2. Require a 2:1 uncertainty ratio for all trades involving nonpoint credits.

The EPA expects Maryland to require a 2:1 uncertainty ratio for all trades involving nonpoint credit generating practices. The current draft of the manual is silent about this ratio, but notably omits it from a list of trading ratios that would apply to agricultural credits (page 31). If Maryland fails to apply the uncertainty ratio that EPA expects, it runs the risk of having EPA object to permits involving nonpoint credits and blocking these pollution reductions from the Bay Model.

3. Capacity credits from wastewater facilities should not be allowed and performance credits must be based on new and additional pollution reductions.

The only legitimate source of credit generation from wastewater facilities involves new and additional actions taken or investments made to reduce pollution. Capacity or flow based credits not only fail to pass the threshold test of additionality by which all credit generating activities must be judged, such credits would also undermine the functioning of a legitimate trading market by crowding out credit generation from other actors with a virtually inexhaustible supply of free "paper" credits.

On the other hand, the generation of credits from greater performance of wastewater facilities is more in line with the classic rationale for pollution trading. Where a facility affirmatively acts to reduce pollution through optimized performance or the procurement or installation of additional pollution reducing equipment, the resulting reduction would satisfy the test of additionality and the generation of a legitimate credit. However, we remain firmly opposed to allowing performance credits to be generated by a facility that has upgraded to ENR performance levels of 3 mg/L (TN) and .03 mg/L (TP) unless the facility: (a) documents on a credit-generating application the additional actions and/or investments planned to reduce pollution; and (b) achieves concentration levels below 3 mg/L (TN) and .03 mg/L (TP).

More than 75 municipal wastewater plants throughout the Bay watershed achieved ENR concentration levels in 2015, including dozens of facilities in Maryland, thanks to significant investments of taxpayer dollars. It would be inappropriate to allow

these facilities to *increase* future pollution levels while also generating a credit allowing an MS4 to avoid reducing pollution. Only a new and additional reduction in pollution should give rise to the generation of a credit and only after plants reach ENR levels, statutorily defined as 3 mg/L.

4. Clarify that MS4s will only be allowed to trade after major permit modification. Starting on p. 29 the Manual discusses the use of credits by an MS4 to satisfy a permit requirement, which normally requires a 20% reduction of impervious surface within its jurisdiction within a specified time. The current draft of the manual states that “a portion” of the requirement may be met through trading, and does not cap that portion. This is too vague, and given the uncertainties in equating impervious surface restoration with pounds of pollutant reductions, dangerous. In order to ensure that any trading allowances maintain MS4 pollution reduction goals, the details of all trades must be developed through new permits or major permit modifications.

As repeatedly asserted by the EPA, the current MS4 permits issued between 2013 and 2014 do not support trading. The need for a permit to affirmatively authorize trading seems to be acknowledged on p. 7 of the Manual which states: “M54 jurisdictions ***with permits authorizing trading*** can meet a portion of each affected jurisdiction’s impervious surface and Bay nutrient and sediment reduction requirements through the purchase of credits.” However, the Manual later attempts to justify trading under the current M54 permits by way of the “new technology or innovative practices” section of the M54 Accounting Guidance. This method has been affirmatively rejected by the EPA. As a legal matter, the undersigned believe the current MS4 permits could not obtain credits from trading unless the permits underwent major permit modifications and the trading program was properly enacted through the APA process.

5. Establish numerical reduction targets in pounds rather than percentages. New or renewed permits should be written to reduce a certain number of pounds, tailored to the Bay and local TMDL wasteload allocations, rather than to reduce impervious cover by 20%. (This point was raised at the September Committee meeting, and we thought it was recognized as valid.)

6. Land application of wastewater should not be a creditable practice. The draft manual would allow credits to be generated through the land application of “wastewater with pre-treatment and nutrient management controls” (page 21). This appears to imply that the nutrient load will be eliminated by land application. In reality, of course, this does not happen. A portion of the nutrients in the wastewater may be taken up by crops, but a significant portion will also end up in the Chesapeake Bay. In other words, land application may reduce, but will not eliminate, the wastewater load. The loadings from nonpoint agricultural land are uncertain; it is very difficult to estimate the extent of the load reduction generated by the land application of wastewater. The manual should be revised to eliminate this credit-generating option, or, at a minimum, should specify that credit will only be given for

the net reduction in nutrient load after accounting for the fate and transport of nutrients in land-applied wastewater.

7. The unlimited bubble permit option will have adverse impacts on local water quality and should be removed. The draft manual would allow “bubble permits” of unrestricted size. Page 25 states that “[a] single combined bubble permit may be issued to multiple owners in a watershed electing to form an association and obtain a single permit as co-permittees.” There is no restriction on the size of the “watershed” being discussed – it could be the Chesapeake Bay watershed – and there is no restriction on the number of “multiple owners.” Although we do not expect all point sources in Maryland to form an association and apply for a single permit, the manual would allow it. Bubble permits for water pollution require unwieldy mass-balance calculations, even when the bubble is restricted to single waterways. As bubbles expand to multiple waterways, some of which have insufficient ambient monitoring, the calculus becomes much harder – effectively impossible – and the permit writer loses the ability to predict local water quality impacts. Once a permit is issued, the sources within a bubble may shift pollution loads in unpredictable ways, creating a high likelihood of permit-sanctioned water pollution hotspots. At the very least, Maryland should restrict bubble permits to single waterways where they might be able to predict water quality impacts. Our preference would be to remove this very dangerous option from the manual, as bubble permits are a completely different and distinct concept from nutrient trading deserving of a separate public notice and comment period. The inclusion of bubble permits in this manual only fosters the perception that the purpose behind this policy document is not about reducing pollution, but about providing regulatory relief for permit holders.

8. Trading Geography must be amended. While we appreciate the addition of language on page 21 discussing the performance of water quality modeling to determine whether individual trades will violate the water quality standards of receiving waters, this language is insufficient to provide assurances that local water quality will not suffer as a result of individual trades. The guidance manual would benefit from the clear statement of rules and restrictions regarding local water quality. Importantly, Item 6 (“Ensuring Local Water Quality; Defining Trading Areas”) within Section III of the manual must be revised to eliminate option 4 in the geographical trading hierarchy. Trading within the combined boundary of an eight-digit watershed overlaid with the municipal boundary of an MS4 permittee is sufficiently expansive to generate a market for credits. Any trading outside of this boundary is unreasonable and inappropriate and should be clearly prohibited in this manual. The undersigned expressly reject the proposed Trading Regions on pp. 13 and 14 that include the Potomac River Basin, Patuxent river Basin, and the Eastern Shore and Western Shore River Basins, including a portion of the Susquehanna watershed. These regions are far too expansive and have no hydrological justification. Furthermore, these regions could not possibly ensure compliance with local TMDLs.

We appreciate this opportunity to submit these comments, which have been limited to issues we feel are especially important. If and when MDE and MDA proceed to develop regulations to implement a complete trading and offset program, we ask you to consider the “draft proposal for regulatory language” that we provided to Lynn Buhl on May 12, 2016.

Respectfully submitted,

Doug Myers, member WQTAC
Chesapeake Bay Foundation

Jeff Horstman
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Abel Russ
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Bob Gallagher, Betsy Nicholas, Karla Raettig
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Christophe Tulou, Senior Advisor on the Chesapeake Bay

¹ Brantley, S. B. (2016, January 6). Letter from the Office of the Attorney General [Letter to Delegate Marc Korman]. *See also, CBS v. Comptroller*, 319 Md. 687, 696 (1990)(“when a policy of general application, embodies in or represented by a rule, is changed to a different policy of general application, the change must be accomplished by rulemaking”).

² *See* Environmental Protection Agency, *Maryland’s Trading and Offset Programs Review Observations: Final Report 2.17.2012*. (Noting that Maryland must enact policies to accommodate new nonpoint source growth in order to be in statutory and regulatory conformance with EPA’s trading policies).

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October 7, 2016

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Re: Comments on Final Draft Maryland
Trading and Offset Manual and
Nutrient Trading Policy

Dear Ms. Franke, Ms. Levelev, and Ms. Payne:

Thank you for the opportunity to provide comments on the Final Draft Maryland Trading and Offset Policy and Guidance Manual (the "Manual") and to participate in the meetings of the Water Quality Trading Advisory Committee ("WQTAC"). The Maryland Industrial Technology Alliance ("MITA") submits the following additional comments on the Manual and on the conceptual framework for nutrient trading in Maryland. These comments supplement our previous comments submitted on May 10, 2016.

As we previously indicated, MITA members represent a vital component of Maryland's economy as producers of a wide variety of products and transportation services and provide high-paying jobs to thousands of workers throughout Maryland. Our members' products are used in medicines, foods, fertilizers, water treatment, and in the production of automobiles, airplanes, energy and more. MITA members have an interest in both generating and potentially purchasing nutrient credits. MITA

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supports the development of a robust and fair nutrient trading program that provides the maximum flexibility for the generation and trading of credits to address nutrient loading in the Chesapeake Bay.

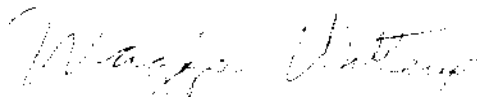
In our previous comments dated May **10**, 2016, MITA recommended that the nutrient trading program be expanded beyond just agricultural property to include industrial, commercial and residential property as well. Although the current draft has been expanded to include industrial stormwater, we recommend that the Manual include some "catchall" language to leave open the possibility for credits to be generated and used in ways other than through the practices and from the sources identified in the Manual. Specifically, we suggest adding the following language:

- Page 17, 1st full paragraph, second line: insert the following at the end of the 1st full sentence after the term "credits": "... between and among WWTPs, MS4 and industrial stormwater permit holders, and agricultural credit generators."
- Page 17, 1st full paragraph, 6th line, insert new sentence after the sentence ending with "... agricultural credits.": "This Manual is not intended to restrict credit generation and trading to only those practices specified in this Manual, but is intended to provide the framework to be used for credit generation and trading between and among WWTPs, MS4 and industrial stormwater permit holders, and agricultural credit generators. Additional credit-generating activities will be considered and evaluated on a case-by-case basis."
- Top of Page 40, 1st line, insert a new sentence after the sentence ending with: "... and will be modified as needed.": "Additional practices and credit-generating activities will be evaluated on a case-by-case basis."

Allowing credits from the widest variety of possible sources, including non-agricultural measures, will incentivize preservation practices and will provide the maximum flexibility for the development of creative solutions that can work together in combination to restore the Chesapeake Bay in the most efficient and effective way possible.

Thank you for your consideration. MITA would welcome the opportunity to participate in any additional stakeholder groups related to nutrient trading in Maryland.

Very truly yours,



Margaret L. Witherup

Maryland Building Industry Association

Comments



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October 12, 2016

Ms. Lynn Buhl
Water Administrator
Maryland Department of Environment (MDE)
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RE: Comments on the Final Draft Maryland Trading and Offset Policy and Guidance Manual
Chesapeake Bay Watershed

Dear Ms. Buhl:

On behalf of the Maryland Building Industry Association (MBIA), representing over 1,400 land developers and builders, I appreciate the opportunity to provide comments on the final draft of the Maryland Trading and Offset Policy and Guidance Manual. Thank you for including the industry in the stakeholder process leading up to the drafting of this Manual. We know that nutrient trading will play an essential role in Maryland's ability to comply with the pollution reductions required by the TMDL.

Market based approaches such as nutrient trading will provide a cost effective means of compliance with pollution reduction requirements and will also accelerate the clean-up effort by incentivizing the installation of BMPs such as stormwater retrofits and stream restoration. The utilization of cross-sector trading may offer opportunities for sectors that generate reductions beyond baseline to trade these credits to other sectors seeking cost effective ways of meeting their reduction goals.

Our specific comments are focused on Section II and Section III and are as follows:

Section II Key Principles

MDE will require a 5 percent retirement ratio to each point source generated credit. This retirement ratio is in addition to the 10 percent "margin of error" ratio. Layering retirement ratios to trades will artificially reduce the inventory of credits unnecessarily.

Duration of Credits

The trading proposal allows a facility submitting a trading proposal to demonstrate that it has secured credits for at least 2 five-year permit terms. The Department should include a required analysis of any impact to the design capacity of the facility during and within 10 years immediately following the 2 permit terms.

Options for Acquiring Credits

The policy outlines the allocation provided for retiring an existing OSDS by connecting to an ENR facility. The allocation provided should be at least 50 percent of the original OSDS load and, as stated in the draft, 80 percent if the systems to be connected are located in the critical area.

The allowance of land application of wastewater with pre-treatment to be used to offset new or expanding nutrient loads can be utilized by shared facility package plants already in use around the State. Some of these plants consistently perform under their discharge permit allowance and can trade capacity with other sources such as OSDS systems not appropriate for WWTP connection.

Section III

Trading Ratios

It is important to reiterate the concern that “stacking” retirement ratios risk artificially reducing the inventory of available credits.

Defining Trading Areas

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 enough flexibility to allow for trades to occur outside of the local watershed boundaries is essential to ensure the availability of credits to serve the short term compliance requirements for MS-4 jurisdictions.

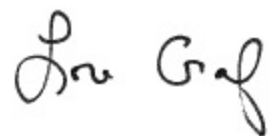
Verification Procedures

The policy requires Wastewater Point Source Generated Credits to be formalized through a permit modification. As part of the modification, the impact of credit generation on the design capacity of the ENR system and any potential compromise of the approved current 10-year Water and Sewer Master Plan should be a factor in the modification.

MBIA believes that the implementation of the trading policy will provide local jurisdictions with an important alternative means of compliance with the retrofit requirements of the MS-4 Permit. We know that all of the current MS-4 permit holders are working diligently towards the retrofit goal but many will fall short due to funding, availability of suitable sites or necessary time to complete retrofit work. Cross sector trading with Wastewater Treatment Plants is an important alternative means of compliance but should be used only as a short term or interim action until retrofit work can be completed and verified.

Again, thank you for the opportunity to participate in this important effort.

Sincerely

A handwritten signature in black ink, reading "Lori Graf". The letters are cursive and fluid, with the first name "Lori" and last name "Graf" clearly distinguishable.

Lori Graf
CEO, MBIA

cc: Dave Lunden, President
Katie Maloney, Lobbyist

Maryland Department of Planning Comments

Fwd: Updated Sections I-IV of the Trading Manual for Review by 9.9.16

1 message

Joe Tassone -MDP- <joe.tassone@maryland.gov>

Mon, Oct 3, 2016 at 11:14
AM

To: Marya Levelev -MDE- <Marya.Levelev@maryland.gov>

Cc: Jason Dubow -MDP- <jason.dubow@maryland.gov>

Marya, in the invitation to the follow up meeting on Section II this Wednesday, you said that if there are particular aspects and/or questions about Section II, please send them to you by email by September 30th. Sorry to respond late, but I just couldn't get to it Friday.

Basically, I would send you comments and recommendations similar to those I sent you on September 13 (forwarded below). I recognize that you already incorporated some of those recommendations, for which I thank you. The comments/ recommendations I think should still be considered are

1. The additional definitions to add to the Glossary. While I appreciate the changes you made regarding local plans and how trading of excess capacity should be considered, I think the additional definitions will make the connections between this process and MDE's WWTP capacity management guidance much clearer.
2. The comments on performance credits, for which I make a few suggestions below.

I also suggest that the issues with performance credits could be addressed by saying clearly in the Manual that:

1. Performance credits can only be given or sold to local SWM programs to meet MS 4 retrofit requirements, and should not be considered equivalent to market credits, for example, a farmer's credits registered on the exchange;
2. MS 4 jurisdictions can purchase performance credits only to fulfill a maximum of (50%? 60%? 70%) of their current permit requirements to retrofit impervious cover; they must purchase the remaining X% from the open market exchange;
3. The duration for which an MS 4 county can satisfy these MS 4 permit requirements using Performance Credits is limited to their current permit (or their permit when revised to allow them to acquire credits);
4. These limits and conditions are imposed to ensure that use of performance credits does not undermine development of a robust, free trading market.

I don't know if these statements would go in Section II or not, but if you're going to deal with the issue, I suggest doing so at this meeting on Wednesday.

Joe

Joe Tassone
Maryland Department of Planning
(410) 767-4547
joe.tassone@maryland.gov

----- Forwarded message -----

From: **Joe Tassone -MDP-** <joe.tassone@maryland.gov>
Date: Tue, Sep 13, 2016 at 12:56 PM
Subject: Re: Updated Sections I-IV of the Trading Manual for Review by 9.9.16
To: Marya Levelev -MDE- <marya.levelev@maryland.gov>
Cc: Jason Dubow -MDP- <jason.dubow@maryland.gov>

Marya, attached are revised comments and requested edits. The additions to what I sent you last week result from my review of the content relating to Performance Credits, as you requested.

In the attached, the additional requested edits are on page 19 (slight modification of the edits I gave you previously), page 27, and in the Glossary (in addition to the previously suggested terms to add to the Glossary).

Besides those suggested edits, I note the following issues about the proposed treatment of Performance Credits. I don't have suggested edits to address these issues, beyond the suggestions I sent you a few months ago.

From what I see in the draft Manual, the matters of who can acquire Performance Credits, for what purpose, and for how long, are not addressed. So essentially, it seems like you're not distinguishing Performance Credits from Capacity Credits or any other kinds of credits, like those that might come from a farmer through BMP implementation.

Since Performance Credits are really very different from all other credits, this means that you're also not addressing the issues that I understood to be raised by the discussion at the last WQTAC meeting.

Maybe I'm missing something, or you have another way to deal with this. But if not, those issues are the following:

1.

performance credits given or sold to a county SWM program to meet MS 4 requirements are not open market transactions, not equivalent to, say, a farmer selling credits to an MS 4 jurisdiction or a homeowner with a septic system;

2. if performance credits were to be available to anyone on the open market/ credit registry, it would give the WWTPs generating the credits huge advantages over other

- generators;
3. if MS 4 counties were allowed to meet all of their current permit requirements to retrofit impervious cover with performance credits, it would entirely eliminate them as buyers in the open market for the present;
 4. without time limits on the duration for which an MS 4 county can satisfy MS 4 permit requirements using Performance Credits, all of the above impacts on the credit market could be essentially permanent;
 5. allowing performance credits without addressing items 1 through 4 would pretty completely undermine development of a robust open market; and
 6. for all anyone can tell according to the Manual, those impacts on the credit market are potentially permanent.

Hope this is helpful rather than annoying. Thanks for asking for input, and doing a great job on an incredibly difficult task.

Joe

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Montgomery County Comments

WQTAC

Comments on September 2016 Version of Maryland Trading and Offset Policy and Guidance
Manual

October 7, 2016

Montgomery County, MD

1. Page 20, last sentence of section 4. What is meant by “For all other trade scenarios, floating caps serve as the eligibility requirement for ENR facilities”.
2. Page 24, last sentence of section 5.7. The last sentence seems to state that the WLA and nutrient loadings limitations will be adjusted based on nutrient trades. At October 5, 2016 meeting Ed Stone stated that loadings limitations will not be changed in permits. Please clarify.
3. Page 33, section 8. Can trading be used to come into compliance or once noncompliance is established trading is off the table?

RES Comments



Benjamin H. Grumbles
Secretary of the Environment
Office of Secretary
Department of the Environment
Montgomery Park Business Center
1800 Washington
Blvd. Baltimore,
MD 21230

Dear Secretary Grumbles,

Resource Environmental Solutions, LLC (RES) appreciates this opportunity to submit comments on the revised Final Water Quality Trading Guidance (Guidance). We commend MDE and MDA for the hard work and improvements that have shaped this Guidance since the work of the Water Quality Trading Advisory Committee commenced earlier this year.

As one of the nation's largest and most experienced ecological offset providers, RES has seen first-hand how accelerated restoration can be achieved on the heels of well-designed regulatory policies. At the same time, RES has by necessity become acutely aware of the fine line between policy features that stimulate vs. those that stifle private investment in these markets. It is with this experience and perspective in mind, together with our shared desire to see Maryland's Bay restoration goals realized, that RES offers the following comments. Generally, we believe the current Draft Manual does a good job of setting forth expectations for, and guidance on, how Maryland's trading program will be implemented; however, as noted below, there are a few important areas we feel need further attention.

While the Guidance is much improved, we remain concerned about the integrity of the trading program, particularly as it applies to proposed trading practices between wastewater treatment plants (WWTPs) and municipal separate stormwater water systems (MS4s). Specifically, we strongly object to the use of "capacity credits" in concept, and to the use of "performance credits" under the current terms proposed in the Guidance.

We believe that allowing the use of such credits has the potential to undermine the credibility and robustness of the trading program but, more importantly, will not result in meaningful load reductions to the Chesapeake Bay and its estuaries. Moreover, such approach will invariably reduce demand for credits from new landscape-based activities and projects that would otherwise result in meaningful restoration and load reductions to the Bay.

We appreciate that everyone's sight remains on restoring the health of the Bay, and toward that end we firmly believe that the element of additionality must be consistently sought and achieved in every trading practice and project approved by the State.

With these concerns in mind, we offer the following comments.

Specific Comments

- a. Allowing WWTPs to trade performance credits under the proposed framework would fail the hallmark test of additionality, resulting in a missed opportunity to drive real and tangible environmental uplift and meaningful progress towards Maryland's Bay restoration goals.**

According to the Guidance, "[f]loating caps will serve as the baselines for generating performance credits for trades with MS4 jurisdictions only. MDE's approach to allowing only performance-based trading with MS4s is not based on a conflict with the principal of additionality." Notwithstanding MDE's comment to the contrary, allowance of performance credits as currently defined in the Guidance is in direct conflict with the principal of additionality.

The concept of additionality is critical to the success of a trading program. This bedrock principle "requires the trading program to determine that a claimed reduction would not have been achieved in absence of a trade."¹ Neither performance nor capacity credits as defined in the Guidance require an action or practice beyond normal operational conditions already required by law or by contract. This by its very definition fails to satisfy the concept of additionality. Without additional verifiable reductions, what MDE is proposing may simply amount to a "paper shuffling" exercise with no measurable benefit to the Chesapeake Bay.

With respect to expectations of point and nonpoint sources and how each is to generate additionality, the Guidance states as follows:

Agricultural credit generating practices are expected to reduce loads beyond the baseline and result in pollutant load reductions beyond what would have occurred in the absence

¹ See Chesapeake Bay Program Scientific and Technical Advisory Committee Reported, "Evaluation Framework for Water Quality Trading Programs in the Chesapeake Bay Watershed" at p. 5., May 2009, available at <http://www.chesapeake.org/pubs/nutrient%20trading%20evaluation.pdf>

of a potential offset or trade. For NPDES regulated permittees, loads discharged below the TMDL baselines are considered a credit generating practice and meet EPA expectations that additionality has been addressed.²

With respect to WWTPs, while MDE's proposed policy may comply with EPA's expectations, it is unlikely to result in any additional reductions that would otherwise occur if WWTP's were required to purchase credits as the result of new WWTP operating practices or landscape-based projects that generate new nutrient loading reductions to the Bay.

Concerns regarding the lack of additionality come into play where minimum standards are not imposed or where the trading baseline is not clearly established. To this last point, we remain concerned that MDE's use of "floating caps" creates uncertainty relative to the baselines for generating performance credits for trades with MS4 jurisdictions.

Maryland appears to be heading down the same path of Pennsylvania's trading program where the WWTPs simply traded capacity credits amongst themselves. The end result there, as daylighted by recent studies and EPA itself, was a failed program operating for years without affecting any real load reduction to the Bay. These types of trades have been outwardly criticized as mere "phantom trades," amounting to nothing more than a paper transaction to satisfy compliance objectives alone. This practice set back and undermined the integrity of Pennsylvania's trading program and was eventually stopped. Maryland cannot and should not simply ignore the telling history here.

b. BRF WWTPs are contractually obligated to optimize nutrient removal and therefore should not be eligible for credit generation.

Section 5.7 of the Guidance provides that "available [performance] credits shall be based on the difference between the existing floating cap and a floating cap based on the new adopted optimized annual average effluent concentrations."³ Section 5.8 provides further, "[t]he available credits shall be based on the existing permitted limits and WLAs for the facility (significant or minor) minus the nutrient loading calculated based on the projected achievable treatment performance level and flow volume."

Allowing performance credits based on "optimized annual average effluent concentrations" would be inconsistent with the terms of existing agreements between the State of Maryland and WWTPs that have received BRF funding to upgrade their treatment systems to enhanced nutrient reduction (ENR), because BRF facilities are already contractually obligated to optimize nutrient

² See 2016 Trading Manual Final Draft, pp. 12-13 (Sep. 2016).

³ Id. at p. 24.

removal. This obligation is, in fact, an express term of BRF agreements.⁴ Allowing BRF facilities to generate and sell credits (based on a floating cap) for something that these WWTPs are already contractually required to do flies squarely in the face of the all-important concept of additionality. Instead of allowing BRF facilities to sell credits, MDE should enforce the terms of the agreement or, as outlined below, make “optimization” the baseline eligibility requirement for WWTPs seeking to trade with MS4s.

To allow BRF facilities to generate credits for optimizing performance would undermine this pre-existing contractual obligation and itself constitute evidence that a BRF facility was in fact in breach of its contract with the State. Additionally, subsidizing BRF facilities to comply with a pre-existing obligation sends the wrong message and is a waste of tax payer dollars. Much like the story in Pennsylvania, such “trading” activity will inevitably fail to translate into actual load reductions benefitting the Bay.

c. If MDE allows WWTPs to sell performance credits, it must limit their use and/or impose minimum standards.

If MDE is to proceed with allowing performance credits (which we do not support), at a minimum, MDE should provide clear guidance on when such credits are appropriate or inappropriate through imposing the following minimum standards:

WWTPs that have undergone ENR upgrades paid for through 100% BRF cost-share funding paid should not be eligible to generate performance credits unless they or until they adopt practices that go beyond the contractual obligations of the BRF agreement (see Section 2.12 that indicates use of public funding only available to meet baseline);

(1) Baseline for WWTPs should be defined as follows:

- Must achieve 4 mg/l for nitrogen;
- Must meet the applicable Waste Load Allocation set forth in the permit;
- Must be in compliance with all permit requirements; and
- Must comply with all contractual BRF requirements; and

(2) WWTPs must meet all obligations set forth in the County Water and Sewer Plan

If minimum standards are adopted, additional procedural requirements should similarly apply, including:

⁴ Standard BRF agreement language imposes the following obligation on recipients of BRF funds, “[Recipient of BRF funds] shall operate the enhanced nutrient removal facility in a manner that optimizes the nutrient capability of the facility in order to achieve enhanced nutrient removal performance levels.”

- Require WWTPs to seek a major permit modification for trading, including public notice and comment of the proposed trade;
- Require such trades to be subject to a MDE credit certification process (which is not made clear in the Policy);
- Include default mechanisms in the permit in the event the trade does not achieve stated reductions, including the possibility of bonding;
- Limit trading to actual reductions as determined by end-of-year “true-up”;
- Consistent with Section III.1 of the Guidance [confirm this is what you mean to be citing here], MS4s must acquire the equivalent number of credits from all three pollutants (nitrogen phosphorus and sediment) to count towards one impervious acre of restoration;
- Require MS4s to meet the applicable trading service area requirements set forth in Section III.6 of the Guidance for MS4 jurisdictions; and
- Require WWTPs to meet applicable delivery and retirement ratios before trading consistent with Section 2.10.

d. MDE should provide a hierarchical preference for agriculture (or non-WWTP) credits.

While the programmatic endorsement of “phantom credit” trading may tempt some as a seemingly cost-effective and convenient mechanism for achieving compliance on a broad scale, we must again stress that the story that recently unfolded before us in Pennsylvania should not now be ignored by the architects of Maryland’s trading program. Others in the environmental watchdog community certainly have not, and no doubt will be poised to pounce upon a program perceived to be heading down the same road.

The use of “performance credits” is consistent with an approach that has been rejected by MDE and MDA in the context of generating agricultural credits. For example, extending the same rationale to agriculture, if a farmer who is authorized to apply 100 pounds of nitrogen to his/her fields under an approved nutrient management plan decides to apply only 10 pounds, that farmer ought to be allowed to sell credits for the 90 pounds that were not applied. However, that approach has been rejected in Maryland.

Allowing WWTPs, but not agriculture, to trade performance credits raises issues of fundamental fairness and equities that threaten to erode the program’s potential for achieving tangible environmental benefit. Indeed, allowing performance credits in this manner would undermine the demand for non-WWTP credits. The resulting uncertainty will undoubtedly create a chilling effect on private investment in landscape-based projects, which should be a fundamental, not expendable, part of any Bay trading program.

We recommend that the MDE set forth a credit sourcing hierarchy that recognizes the relative environmental benefit of credits generated from land-based practices over “phantom credits,” or so-called “performance credits”. Accordingly, we believe a preference for such land-based

credits should be adopted in the event performance credits are allowed. We see this as a vastly important and foundational policy issue that has a direct influence on the stimulation (or frustration) of on-the-ground water quality restoration in the state.

- e. The use of a bubble permits for MS4s is inconsistent with EPA’s use of such permits and therefore MS4s should be excluded from such permits.**

The Guidance leaves open the possibility that municipalities will be allowed to use Bubble or “Overlay” permits for all their regulated discharges, including MS4s.⁵

Although the Guidance does not expressly reference MS4s as a covered permitted discharge, we believe that allowing MS4s to be included within such a permit would be unwise and potentially inconsistent with EPA’s clear direction on the use of bubble permitting.

EPA has allowed the use of flexible bubble permits only where the nature of the point source discharge from discernable outfalls increased the ease with which the quality and quantity of treated effluent could be directly monitored and measured. In contrast with industrial and WWTP outfalls, the nature and quality of discharges from MS4s is more akin to non-point sources and outfalls from MS4s are not readily monitored or measured. Therefore, we believe the proposed extension of the bubble permit to MS4s is inappropriate and would create a host of legal and practical challenges.

For the foregoing reason, the Guidance should clarify that MS4s are not eligible for Bubble permits.

- f. To the extent the use of performance credits is authorized, the Guidance should make clear that the use of such credits may extend only up to 2020.**

Currently, based on discussions of the Advisory Committee, the justification of the use of performance credits was that it would be temporary based on the 2020 compliance timeline imposed on most MS4s. To the extent allowed, the credits should be limited in duration to 2020.

- g. A better method of meeting tough compliance timelines is to have the MS4s enter into negotiated consent decrees.**

It is our understanding that it EPA’s preferred approach is to extend time for MS4 compliance through negotiated consent decrees that allow long term BMP schedules to be adopted.

⁵ See Guidance at pp. 24-25.

Such an approach will create greater certainty toward meeting local water quality requirements, provide much needed relief to the jurisdictions who are unable to achieve CWA requirements in the short term, and would also provide a more robust and defensible trading program. EPA has encouraged the use of consent decrees as a mechanism to adopt innovative and flexible approaches, such as water quality trading, under the framework of Municipal Integrated Planning.⁶

h. The Guidance should make clear that “Capacity Credits” are only useable by other point source buyers and not MS4s.

Based on WWTP workgroup discussions, it was identified that capacity credits would not be eligible to service MS4s. This point should be made more explicitly in the document. The Guidance currently requires delivery ratios to be applied only to non-point source credits.⁷

i. The following aspects of the Agricultural Credit Generation and Acquisition Guidelines set forth in Section IV need further clarification or revision.

1. Farm Tract. Baseline compliance is required at the “farm tract” scale. The Guidance should clarify whether this terminology refers to USDA FSA Farm Tracts or some other state-supplied definition of “farm tract.” In addition, flexibility is needed where portions of a single FSA Tract are under separate ownership or operation.
2. Credit Generation. The Guidance should clarify at what point proposed credit generating practices become grandfathered for the purposes of establishing a fixed credit amount, and the procedures for revising previously certified BMPs based on changed circumstances.
3. Uncertainty and Retirement Ratios. A 10% retirement ratio is excessive, particularly given the added layers of conservatism imposed by trade ratio requirements and built into NTT itself. At a minimum, MDA should consider removing or reducing the retirement requirement where financial assurances or other mechanisms for reducing uncertainty are being provided. The net effect of the multiple layers of conservatism currently proposed will be a drastic increase in the price of agricultural credits and a correspondence strain on the demand for this category of credits.
4. Review Timelines. The Guidance should establish timing guidelines for the processing of credit applications and verification requests. A minimum level of certainty in the process will be necessary to facilitate wide-scale private investment.

⁶ See EPA Memo from Cynthia Giles and Nancy Stoner, June 5, 2012, Integrated Municipal Stormwater and Wastewater Planning Approach Framework, available at https://www3.epa.gov/npdes/pubs/integrated_planning_framework.pdf.

⁷ *Id.* at p. 40, [For agricultural nonpoint sources, two types of Delivery Ratios are applied. The MNTT will automatically apply the appropriate ratios during the credit calculation process.]

We appreciate this opportunity to offer the above comments and look forward to continuing to work with MDE to improve the State's trading program.

Sincerely,

George Kelly

Cc: Lynn Buhl
Susan Payne

COMMENTS FROM THE WORLD RESOURCES INSTITUTE

- Pg 15, Retirement Ratios: this states that “At the time of trade” retirement ratios are applied, but for wastewater trades, this is not the case, right?
- Pg 20, 3rd paragraph: The information about floating caps is unclear. It’s stated that they’re baselines for generating performance credits for trades with MS4s and for all other scenarios, they’re used as eligibility requirements for ENR facilities. To me, the baseline is the eligibility requirement—so I’m not sure what the difference is between the first and last sentence of this paragraph.
- Pg 23, Sec 5.6: Credits should only be able to be generated and traded in PS to PS trades.
- Pg 29, Sec 3: All credit, not just ag credits, should have to meet any relevant certification and verification requirements and be recorded in the registry
- Pg 31, Sec 5: Would change “agricultural retirement ratio” to “nonpoint source retirement ratio” to capture projects like were mentioned at the last meeting on state land. The 10% would apply to any nonpoint sources because of the challenge with quantifying these loads/credits, and it’s not unique to agriculture.
- Pg 33, Sec 8: Same issue was submitted previously. MS4s may not meet the 20% permit requirements in current permit period so want to trade. One benefit of trading is to have a gap-closing measure when MS4s fall short of this 20% requirement. As the manual is currently written, it makes it sound like trading is not currently possible as a gap-closing measure.
- Pg 36, Sec 4: clarify that the baseline for the farm (not the entire watershed) has to be met
- Pg 38, Sec 5.2: Because only category 1 practices can be used right now, would revise wording for category 2 and 3 practices to say things like “would” instead of “will.” I found it a bit confusing that you stated category 1 could be used only but then had language about how you will consider the other BMPs (which aren’t for consideration).

Sara Walker

Associate II, Water Program

World Resources Institute

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