

County Executive Steven R. Schuh

Christopher J. Phipps, P.E.  
Director, Department of Public Works

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Gary Setzer  
Maryland Department of the Environment  
1800 Washington Boulevard, Suite 745  
Baltimore, Maryland 21230-1708

**RE: Maryland Water Quality Nutrient and Sediment Trading and Offset Program**

Dear Mr. Setzer:

Thank you for the opportunity to provide comments on the Maryland Water Quality Nutrient and Sediment Trading and Offset Program regulations being promulgated by the Maryland Department of the Environment (MDE). Anne Arundel County is very interested in the development of a healthy and effective nutrient and sediment trading program in Maryland, and will be very likely to consider utilizing components of the eventual program both as they pertain to water reclamation facilities and Municipal Separate Storm Sewer System (MS4) permit obligations.

Our proposed additions, deletions, and revisions are included below, accompanied by explanatory comments:

Page	Section	Comments
8	.04 Eligibility – “The Department may exclude the following persons from participation <i>generating credits</i> in the Maryland Water Quality Nutrient and Sediment Trading and Offset Program.”	Entities in non-compliance should not be prevented from purchasing credits, as credit purchase could be one mechanism to address the non-compliance.
8	.05 General Policies – (B)(1) – “shall be limited to those credits <i>generated in the same segment or</i> upstream <i>of the same segment</i> of where the discharge reaches impaired waters.”	It’s important to emphasize that the point of concern – and the geography of the local TMDL – is at the segment level. A policy that is more restrictive than that level of analysis is likely to be unworkable.
8	05 General Policies – (B)(1)	We are concerned that an absolute declaration along these lines, without the capacity for some sort of review, could potentially stifle otherwise sensible pollution reduction activities. For instance, if a WWTP straddles two impaired

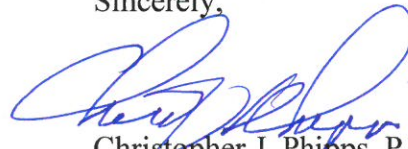
		watersheds, and discharges to the “upstream” watershed, would the WWTP be precluded from connecting septic in the downstream watershed to public sewer and receiving a corresponding, additional discharge increase at the WWTP? If so, that creates a substantial disincentive to septic connection work, given that sewer service areas routinely span multiple watersheds. We think that MDE should include language that allows for some discretion in particular cases where there is an overall benefit to water quality.
9	.05 General Policies – (E)(7) – “ <del>The Department shall apply reserve ratios annually to trades of point or nonpoint sources to create a reserve with priority of use given to the sector that created the reserve.</del> ”	This entire clause should be removed. Reserve ratios represents an unnecessary surcharge on exchanges. If a jurisdiction generates a “reserve” at its WWTPs for, instance, the jurisdiction should retain the right to utilize or retire that reserve as it sees fit, not forfeit that reserve for MDE to assign to another permittee it deems appropriate.
9	.05 General Policies E(4)(a) – “ <i>Annual</i> credits are generated from certified projects or practices and are valid for one calendar year (January through December) and cannot be banked for future years. (a) <i>Annual</i> credits may be used only during the year they are generated.”	It should be made explicit that this section pertains just to annual credits.
9	.05 General Policies E	An additional section should be added indicating that credits locked in at the point of trade will not be subject to future changes in the regulations (e.g., BMP efficiencies, ratio adjustments, etc.)
11	.07 Wastewater Point Source Cap Management and Trading – (A)	We strongly disagree that Wastewater point source generated credits should be implemented and enforced through their NPDES permit. If a buyer purchases credits from a WWTP, knowingly at risk, and that WWTP exceeds its load caps, the buyer should be the entity exposed to potential non-compliance. Many WWTP operators will not want to open their permits or expose themselves in a way that puts their own permit at risk to participate in a trading program.



12	.07 Wastewater Point Source Cap Management and Trading – (A)(5) – “ <del>A 5 percent reserve ratio shall be applied to each point source generated credit.</del> ”	Credits generated at WWTPs are arguably the most robust and verifiable possible. There should not be any reduction based on uncertainty or other factors applied to these credits.
12-13	.07 Wastewater Point Source Cap Management and Trading B .Baseline Calculations (2)(a-e)	Placing limits on the amount of credits that can be generated from an existing minor wastewater treatment plant will create a disincentive for upgrading these plants. These systems are smaller and may lack the financial means (e.g. mobile home parks) to upgrade. Furthermore reduced nutrient loads for these systems are a goal rather than a requirement. The ability to generate credits could provide a significant source of revenue for upgrades to these plants.
14	.08 MS4 Stormwater Point Source Trading – (A)(1) – “ <del>MS4 permittees may only enter into a trade or purchase of credits if the use of trading is specifically authorized under the terms of the MS4 permit.</del> ”	Strike this entire section. It is redundant to assert that trading is only allowed if the permit allows it.
14	.08 MS4 Stormwater Point Source Trading – (A)(1)(a) – “Permittees are eligible to <del>acquire</del> <i>generate</i> credits if no unaddressed permit violations exist that are considered by the Department to be significant non-compliance.”	Entities in non-compliance should not be prevented from purchasing credits, as credit purchase could be one mechanism to address the non-compliance.
16	.10 Generation and Acquisition of Credits by Non-Regulated Sources – (A)(2) – “Small <del>MS4s</del> <i>jurisdictions</i> not regulated by the federal NPDES program.”	By definition, “MS4s” are regulated by the federal NPDES program.
16	.10 Generation and Acquisition of Credits by Non-Regulated Sources – (B)(2) – Delete this entire clause.	The specific crediting for individual practices, such as septic upgrades, should be incorporated by reference, not included in the regulations themselves, as those numbers may change over time as the science evolves.

Again, we appreciate the opportunity to provide MDE with our comments and look forward to the implementation of an effective and meaningful nutrient and sediment trading program in the State.

Sincerely,



Christopher J. Phipps, P.E.  
Director

cc: Lynn Buhl, Assistant Secretary, Maryland Department of the Environment  
Bernie Marczyk, Governmental Relations Officer, Anne Arundel County  
Bruce Wright, P.E., Deputy Director, Bureau of Engineering, DPW  
Erik Michelsen, Engineer Administrator, Watershed Protection and Restoration Program