



CHESAPEAKE BAY COMMISSION

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Virginia's Nutrient Credit Trading Program – A Summary

Authority:

1. Code §62.1 – 44.19:12 – 19; (9 VAC 25-820-10) Point source wastewater & industrial VPDES permit compliance (N & P); Nutrient Credit Exchange Program
2. Code §10.1 – 603.8:1 Nonpoint source post-construction phosphorus loading requirement
3. Code §10.1-603.15:1 Nutrient Trading Act

Who can trade? Point sources can purchase credits to meet load requirements or sell credits if performing below permit limits. Stormwater (new development) can trade with approved nonpoint sources. Agricultural and forest lands that exceed baseline controls can only sell to new or expanding point sources or new development. MS4 permittees, confined animal feeding operations, unregulated existing development and on-site septic cannot currently participate. Trading is voluntary.

What can be traded? Point sources trade nitrogen for nitrogen and phosphorus for phosphorus, pound for pound. Ratio is 1:1 with point to point; ratio is 2:1 with point to nonpoint. Stormwater trades for phosphorus have 1:1 ratio, but credit source retires any associated nitrogen. When calculating credits, nutrient reductions are discounted by a “delivery ratio” based on the project’s location in the watershed. Credits can be short term or permanent depending upon how generated and protected.

Where can trades occur? Point source trades are accomplished between facilities within each major river basin, except the Eastern Shore can acquire credits from the Potomac basin, if needed. Stormwater trades must be within the same river basin.

Eligibility:

Point sources must be in compliance with permits and have reduced loading below their TMDL WLA to generate credits; point sources can buy credits to achieve compliance. Nonpoint sources can generate credits for use by point sources if they achieve an established baseline of agricultural practices, engage in a land conversion or other approved activities. Stormwater trades can utilize permanently generated nonpoint credits such as credits from land conversion with protective easements or similar approved activities. Nutrient credits purchased, must be generated prior to the commencement of the applicant's land-disturbing activity. An entity who wishes to purchase credits must also be in compliance with all legal requirements, and may do so only if the use of credits will not result in degradation of local water quality or public drinking water supply.

Process:

- 1) *Certification*: Point sources submit discharge information by April 1 each year; DEQ approves trades to balance loads and achieve permit compliance by June 1 and publishes summary by July 1 of each year. Nonpoint credit generating activity requires written approval of credits by DEQ; DCR reviews nonpoint source credit submissions and makes recommendation to DEQ. An application for certification must include location of the project, timing of the project, and credit calculations, including assumptions on which those calculations are based.
- 2) *Verification*: DEQ conducts inspections and compliance audits for point source dischargers and nonpoint credit generators.
- 3) *Registration*: Point source credits are tallied and used or not used on an annual cycle. The certification process serves as the registration process as well. Nonpoint source credits are registered for use within the specific river basin where located upon approval by DEQ. A Nonpoint Credit Registry is maintained to track each credit generator, total credits generated and depletion of credits. Credits must be registered before they can be applied to an NPDES permit.

Other:

1. 2011 was the first year in which all facilities were required to meet their respective wasteload allocations. All but 34 registrants under the general permit met their wasteload allocations without the need for trading. 33 of the 34 facilities that exceeded their Total Nitrogen and/or Total Phosphorus wasteload allocations acquired enough credits to meet their compliance needs. One facility acquired Total Phosphorus credits but not in sufficient quantity to comply with their wasteload allocation. An adequate supply of credits was available in every basin except the Eastern Shore. Eastern Shore facilities acquired credits from the Potomac basin in accordance with § 62.1-44.19:18.A.1. of the State Water Control Law.
2. As of August 28, 2012, seven nonpoint credit banks in three river basins have been approved to sell credits. Between July 2011 and August 2012, nineteen stormwater permits included nonpoint source phosphorus credits purchased from 3 different banks within the James River basin.
3. Currently, for all stormwater trades, the credit provider shall pay a water quality enhancement fee equal to 6% of the amount paid by the credit purchaser into the Virginia Stormwater Management Fund established by § [10.1-603.4:1](#).
4. Legislation passed during 2012 session (SB77 & HB176) expands the current nutrient trading program and outlines the process for certifying and registering nutrient credits. DCR, working with DEQ and other state agencies, shall establish clear regulatory standards for credit certification, establishment of baseline levels, and other factors for the efficient operation of nutrient credit markets in Virginia. The envisioned expanded program could include Municipal Separate Storm Sewer System (MS4) permittees, confined animal feeding operators, on-site waste systems and facilities registered under the Industrial Stormwater General Permit. Also, by July 1, 2013, the State Water Control Board shall reevaluate the 2:1 trading ratio required of point source to nonpoint source trades.