

NUTRIENT TRADING DEVELOPMENTS IN VIRGINIA

MWCOG ChesBay Policy Committee
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HISTORY

- 2005/2006 - Trading Established Wastewater
- 2009 - Section Added to the Stormwater Management Law
 - Allowed the use of offset credits to achieve required nutrient reductions to stormwater discharges from construction activities
 - Discharge to an MS4
 - Discharge cannot contravene Program Plan
- 2011 - Code Amended
 - “Any locality that has adopted a local stormwater Management Program...”
 - Operators “Shall be allowed to utilize offsite options...”

“SHALL ALLOW” CONDITIONS

- Less than 5 acres will be disturbed;
 - OR
- Post-construction phosphorus reduction less than 10 lbs. per year;
 - OR
- At least 75% of the required phosphorus reductions are achieved onsite;

LIMITATIONS

- Bank establishment and credit use not “In contravention of MS4 Plan”
 - Changed To
- In contravention local water quality based limitations at the point of discharge to violation of:
 - State Impaired Waters
 - Standards
 - Local standards in an approved MS4 Program Plan

2012 LEGISLATION

- Established “Nutrient Trading Act”
- Required DCR to adopt new regulations to establish certification for nutrients other than point source credits or credits thru the DEQ Watershed General Permit
 - Effectively opened up nutrient credit generation to any established Best Management Practice
 - Or “innovative method of control or removal”

NUTRIENT TRADING ACT

- ◉ Added MS4 Permittee may acquire, use and transfer nutrient credits for purposes of compliance with WLA.
- ◉ Removed the MS4 Program Plan Limitation.
- ◉ Locality given five day “First Right of Refusal” to purchase credits from a bank to be established.

ESTABLISHING BASELINE

- Urban Baseline
 - New Development and Redevelopment
 - Compliance with Stormwater Management Regs.
 - Retrofits
 - Urban Sector WIP Level
 - Management area definition concern
 - Contiguous parcels deeded to same owner
 - Management area does not include publicly owned roads or rights-of-way.
 - Language Needs Cleaning Up
 - Mixes concept of Loads and Practices

LOCAL WATER QUALITY

- Localities want more direct control in case of a local nutrient TMDL
 - Only a matter of time before free-nutrient criteria
- Local government concern is a greater than regulatory load in a local TMDL
 - Accumulation of “de minimus” impacts

CERTIFICATION OF CREDITS

- Public Notification of Proposed Facility
 - DEQ will post a notice on its website
 - Lack of Active Notification
 - Environmental Stakeholders
 - Public Meeting
 - Lack of Transparency
- Technical Review of Facility Application
 - “May” Visit vs. “Will” Visit

COMPLIANCE AND ENFORCEMENT

- Issue of certainty that credit value will not change.
 - Double Edged Sword
 - BMP Change in Efficiency
- No consensus on how to provide assurance that baseline won't change with regulations.
- Insufficient detail on DEQ's inspections, scheduling and criteria.

FINANCIAL ASSURANCE

- **Local Government:**
 - When the nutrient credits are generated or used by a locality, authority, utility, sanitation district, or owner operating an MS4 or a point source, the existing tax or rate authority may be used to provide evidence of the financial assurance.

STATUS

- Still awaiting final draft version;
- DEQ taking draft regulation to SWCB in December to request public comment authorization;
- Legislative Changes
- Anticipated approval in March 2014