



November 7, 2012

Mr. Brian Van Wye
District Department of the Environment
Natural Resources Administration
1200 First Street, NE, 6th Floor
Washington, DC 20002

Dear Mr. Van Wye:

Thank you for soliciting feedback on the Proposed Rulemaking on Stormwater Management and Soil Erosion and Sediment Control. This letter contains comments from the World Resources Institute (WRI). For over a decade, Chesapeake Bay jurisdictions have partnered with WRI to develop their trading programs for nutrients and sediment. WRI is also a national and international expert on trading, having inventoried the U.S. programs and established a pilot project in China. Forthcoming work will determine if and how MS4s could use nutrient credits to meet portions of their Bay TMDL wasteload allocations.

These comments focus on the stormwater retention credit (SRC) trading program. WRI is excited by the use of trading to achieve retention standards. The District Department of the Environment (DDOE) proposes a robust trading program, likely to reduce the cost of meeting the retention standard, extend green infrastructure in the District, and provide District residents with new revenue sources. Thus, WRI's comments are just suggestions to consider if they would improve the proposed program. They are based on WRI's knowledge of trading programs throughout the United States.

WRI offers three comments:

1. Consider including additional flexibility in updating the in-lieu fee rate

Section 530 establishes an in-lieu fee that offers one compliance option for properties facing the retention standard. The fee rate represents the full life-cycle costs for DDOE to retain one gallon of stormwater per year. Payment is based on the fee rate in effect at the time payment is made, and the fee rate may be adjusted annually for inflation and as necessary to accommodate rising life-cycle costs. By providing for the fee rate to adjust to actual implementation costs (which could rise or fall based on practices used by DDOE), the trading program could be more efficient in the long run. The Neuse Nutrient Offset Payment Rule in North Carolina provides a useful example.

In the Neuse River watershed, loads from newly-developed, residential properties are capped at 4.032 kg/ha/yr total nitrogen (TN). Properties must install onsite treatment to achieve a loading rate of 6.720 kg/ha/yr TN. Similar to DC, properties may account for the difference by installing additional onsite treatment, purchasing nutrient credits, or paying the in-lieu fee. Collected in-lieu fees support the North Carolina Ecosystem Enhancement Program (EEP), which assumes compliance responsibility from the regulated property, enrolls landowners, pays them to install best management practices, and uses the resulting nutrient credits for compliance.

The EEP has more flexibility in altering fee rates than that provided to DDOE. Nutrient Offset Payment Rates for the NC Ecosystem Enhancement Program (15A NCAC 02B .0274) requires minimal, annual revisions to the fee rate and quarterly revisions when the fee rate increases by 10 percent or more. If actual costs exceed actual receipts, the EEP may raise additional revenue by applying an adjustment factor to the fee

rate. The adjustment factor temporarily increases the cost of payments to the EEP, and remains in place from one to four years depending on the time necessary to raise funds and fill the revenue gap. Once the adjustment period ends, rates return to the calculated actual cost.

Compared to the DC approach, the Neuse approach has advantages and disadvantages. Regarding advantages, it allows the EEP to revise its fee rate quarterly if costs rise dramatically. Second, it provides an upper-bound on rate increases (i.e., 10 percent), which helps potential credit sellers that want to compare the cost of their planned credits to the fee rate. Finally, it allows for nuanced rate adjustments when just one of many life cycle costs (e.g., land acquisition and not project design, project management, administration, etc.) increase substantially. Regarding disadvantages, the Neuse approach is clearly more complex than the DC approach.

II. Develop outreach materials for credit sellers

At the November 5, 2012 public hearing, DDOE staff mentioned the need for outreach materials to credit sellers. Such materials are important because prospective credit sellers, unlikely to read regulatory language, need a generic understanding of the trading program before they consult aggregators or others with technical expertise for a deeper investigation. If DDOE develops such materials, they might benefit from reviewing similar outreach materials published by Virginia Department of Environmental Quality (VADEQ) and Maryland Department of Agriculture (MDA). VADEQ developed [Trading Nutrient Reductions from Nonpoint Source Best Management Practices in the Chesapeake Bay Watershed: Guidance for Agricultural Landowners and Your Potential Trading Partners](#). The Maryland guidance, *Producing and Selling Credits in Maryland's Nutrient Trading Market: Guidance for Agricultural Producers and Landowners in the Chesapeake Bay Watershed* is available upon request from MDA or WRI. MDA also [maintains a website](#) with more information.

III. Consider recording credits in a publicly available registry

Sections 527.7, 531.2, and 533.7 list trading program functions that could be addressed in a registry. DDOE should consider developing a registry or using those available through third parties such as Markit Environmental Registry or WRI's NutrientNet. The registry would provide a dynamic database of all credit offers and purchases, prices, and implementation terms and conditions. Thus, it would provide an invaluable source of information for program monitoring and reporting as well as a research tool for DDOE staff and others in academic or NGO institutions.

Conclusion

Thank you again for the opportunity to provide feedback on the Proposed Rulemaking on Stormwater Management and Soil Erosion and Sediment Control. Please be in touch with any questions. Also, WRI welcomes the opportunity to partner with DDOE on any projects going forward.

Sincerely,



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