

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF
ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF
NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 96. WATER QUALITY STANDARDS IMPLEMENTATION

§ 96.8. Use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay ~~[w]~~Watershed.

(a) *Definitions.* The following words and terms, when used in this section, have the following meanings, unless the context indicates otherwise:

Aggregator—A person that arranges for the sale of credits generated by another person, or arranges for the credits to be certified, verified and registered.

Agricultural operation—The management and use of farming resources for the production of crops, livestock or poultry, or for equine activity.

Baseline—

(i) The compliance activities and performance standards ~~[which]~~ **THAT** must be implemented to meet current environmental laws and regulations related to the pollutant for which credits ~~[or offsets]~~ are generated.

(ii) The term includes allocations established under this chapter, in a TMDL or **IN A** similar allocation, for ~~[those]~~ **THE** pollutant[s].

BMP—Best management practice—

(i) Schedules of activities, prohibitions of practices, maintenance procedures and other management practices to prevent or reduce pollutants to surface waters of this Commonwealth.

(ii) The term includes treatment requirements, operating procedures and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(iii) The term also includes riparian buffers, soil and slope stabilization measures, control of fertilization practices, and other actions and measures designed to reduce erosion and runoff of soil, sediment and pollutants from the land surface during precipitation events; or to reduce the contamination of groundwater with pollutants that may affect surface waters.

(iv) The term includes BMP measures developed under this title to reduce pollutant loading to surface waters.

(v) THE TERM INCLUDES ACTIVITIES, FACILITIES, MEASURES, PLANNING OR PROCEDURES USED TO MINIMIZE ACCELERATED EROSION AND SEDIMENTATION AND MANAGE STORMWATER TO PROTECT, MAINTAIN, RECLAIM AND RESTORE THE QUALITY OF WATERS AND THE EXISTING AND DESIGNATED USES OF WATERS WITHIN THIS COMMONWEALTH BEFORE, DURING AND AFTER EARTH DISTURBANCE ACTIVITIES.

Certification—Written approval by the Department [~~of the use~~] of a proposed [~~or implemented~~] pollutant reduction activity to generate credits [~~or offsets,~~] before [~~those~~] **THE** credits [~~and offsets~~] are verified and registered [~~by the Department~~] to be used to comply with NPDES permit effluent limitations.

Credit—The tradable unit of compliance that corresponds with a unit of reduction of a pollutant as recognized by the Department which, when certified, verified [~~;~~] and registered [~~by the Department~~], may be used to comply with NPDES permit effluent limitations.

Credit reserve—Credits set aside by the Department to address pollutant reduction failures and uncertainty[~~, and to provide liquidity in the market~~].

DMR—*Discharge monitoring report.* **THE DEFINITION OF DMR IN THE DEFINITION OF NPDES REPORTING FORM IN §92.1 IS INCORPORATED BY REFERENCE.** (*Editor's note: If the amendments to chapter 92 occur prior to publication of this final-form rulemaking, this definition must read: "The definition of DMR in §92a.1 is incorporated by reference."*)

Delivery ratio—A ratio that compensates for the natural attenuation of A pollutant[s] as [~~they~~] IT travelS in water before [~~they~~] IT reachES a defined compliance point.

Edge of segment ratio—A ratio that identifies the amount of A [~~land-applied~~] pollutant[s] expected to reach the surface waters at the boundary of a Chesapeake Bay Watershed Model segment through surface runoff and groundwater flows from A **POLLUTANT** [~~nonpoint~~] source[s] within a watershed segment.

Nutrient—Nitrogen [~~and~~] **OR** phosphorus.

Offset—~~[The nontradable unit of compliance that corresponds with a unit of reduction of a pollutant as recognized by the Department which, when certified, verified and registered by the Department, may be used to comply with NPDES permit effluent limitations.]~~ **THE POLLUTANT LOAD REDUCTION MEASURED IN POUNDS THAT IS CREATED BY AN ACTION, ACTIVITY OR TECHNOLOGY WHICH WHEN APPROVED BY THE DEPARTMENT MAY BE USED TO COMPLY WITH NPDES PERMIT EFFLUENT LIMITATIONS, CONDITIONS AND STIPULATIONS PURSUANT TO CHAPTER 92 (RELATING TO NPDES PERMITS).** (*Editor's note: Placeholder for an editor's note explaining that Chapter 92 may soon be Chapter 92a, so that "92a" will replace "92" here.*) **THE OFFSET MAY ONLY BE USED BY THE PERMITEE THAT GENERATED THE POLLUTANT LOAD REDUCTION.**

Pollutant—Nutrients ~~[and]~~ **OR** sediment.

POLLUTANT REDUCTION ACTIVITY—AN ACTIVITY, SUCH AS A BMP OR EFFLUENT CONTROL, THAT IS IMPLEMENTED TO PREVENT OR REDUCE A POLLUTANT LOAD TO SURFACE WATERS OF THE COMMONWEALTH.

Registration—An accounting mechanism used by the Department to track certified and verified credits ~~[and offsets]~~ before they may be used to comply with NPDES permit effluent limitations.

Reserve ratio—A **10%** ratio that is applied to the pollutant reductions generated, which establishes the credits to be set aside for the Department's credit reserve.

Threshold—Activities and performance standards beyond baseline compliance which are required by **SUBSECTION (d)(3)** ~~[the Department]~~ before credits ~~[or offsets will]~~ **MAY** be certified.

Tradable load—The amount of **NONPOINT SOURCE** pollutant reduction[s] determined to be the projected future pollutant load ~~[which]~~ **THAT** is the difference between the total reduction[s] theoretically possible from maximum implementation of **POLLUTANT** reduction activities, and the reduction[s] associated with a level of **POLLUTANT** reduction activities identified by the Department as reasonably attainable.

Trade—A transaction that involves the sale or other exchange, through a contractual agreement, of credits that have been certified, verified and registered ~~[by the Department]~~.

Trading ratio[s] - **A [R] Ratios** applied ~~[by the Department]~~ to adjust **A** pollutant reduction[s] when ~~[certifying]~~ **CALCULATING** credits ~~[or offsets]~~ for a pollutant reduction activity. **A TRADING RATIO IS USED** to address uncertainty, water quality, reduction failures or other considerations. ~~[These ratios]~~ **THE TERM [may] WILL** include a delivery ratio, an edge of segment ratio and a reserve ratio.

Verification—~~ASSURANCE THAT THE~~ Implementation of the verification plan contained in a certification, PERMIT OR OTHER APPROVAL ISSUED BY THE DEPARTMENT UNDER THIS SECTION HAS BEEN IMPLEMENTED. VERIFICATION IS REQUIRED ~~[as required by the Department,]~~ prior to registration of the credits ~~[or offsets]~~ for use in an NPDES permit to comply with NPDES permit effluent limitations.

(b) *Chesapeake Bay water quality.*

- (1) Credits and offsets may be used to meet legal requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay.
- (2) Credits ~~[and offsets must]~~ MAY be generated only from A pollutant reduction activity that has been certified, verified and registered ~~[by the Department]~~ under this section.
- (3) Credits and offsets may be used by permittees to meet effluent limits for nitrogen, phosphorus and sediment expressed as annual loads in pounds contained in NPDES permits that are based on compliance with water quality standards established under the Federal Water Pollution Control Act (33 U.S.C.A. §§ 1251—1387), specifically for restoration, protection and maintenance of the water quality of the Chesapeake Bay.
- (4) ~~[The use of e]~~ Credits and offsets [must involve] MAY ONLY BE USED FOR comparable pollutants, UNLESS OTHERWISE AUTHORIZED BY THE DEPARTMENT. For example, nitrogen credits or offsets may only be used to meet nitrogen effluent limits.
- (5) The use of credits and offsets must comply with legal requirements under applicable laws and regulations, including the requirements of this section.
- (6) Credits and offsets may not be used to comply with technology-based effluent limits, except as expressly authorized by Federal regulations administered by the EPA.

(c) *Methodology.*

- (1) GENERAL. The Department ~~[may]~~ WILL use ~~[any]~~ ONE OR MORE of the methods, DATA SOURCES OR CONCLUSIONS contained in this subsection when ~~[calculating and]~~ certifying A POLLUTANT REDUCTION ACTIVITY TO GENERATE credits ~~[and offsets]~~.
- (2) Credits ~~[and offsets]~~ may be calculated by use of pollutant removal efficiencies for BMPs, and edge of segment and delivery ratios addressing fate and transport of pollutants, ~~[approved by the EPA Region III Chesapeake Bay Program Office for use with the]~~ CONSISTENT WITH Chesapeake Bay Watershed Model Version 4.3

or ~~any~~ A subsequent version[s]. **THE POLLUTANT REMOVAL EFFICIENCIES AND EDGE OF SEGMENT AND DELIVERY RATIOS WILL BE AVAILABLE ON THE DEPARTMENT'S NUTRIENT TRADING WEBSITE.**

(3) The Department may rely on results from the following modeling tools, as amended or updated, to approve other pollutant removal efficiencies for BMPs:

- (i) Science Algorithms of the EPA Models-3 Community Multiscale Air Quality (CMAQ) Modeling System, Atmospheric Modeling Division, National Research Laboratory, U.S. Environmental Protection Agency, EPA/600/R-99/030, (Daewon Byun and Kenneth L. Schere, 2006).
- (ii) EPA Watershed Model (Donigian et al. 1994; Linker 1996; Linker et al. 2000).
- (iii) EPA Chesapeake Bay Hydrodynamic Model (Wang and Johnson 2000).
- (iv) EPA Estuarine Water Quality Model (Cercio and Cole 1993, 1995a, 1995b; Thomann et al. 1994; Cercio and Meyers 2000; Cercio 2000; Cercio and Moore 2001; Cercio et al. 2002a).

(4) The Department may rely on the methods, data sources and conclusions in the following EPA documents, as amended or updated:

- (i) *Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability*. EPA 903-R-03-004. Region III Chesapeake Bay Program Office, Annapolis, Maryland (2003).
- (ii) *Technical Support Document for Identification of Chesapeake Bay Designated Uses and Attainability-2004 Addendum*. EPA 903-R-04-006. Region III Chesapeake Bay Program Office, Annapolis, Maryland (2004).
- (iii) *Revision, Chesapeake Bay Program Analytical Segmentation Schemes: decisions and rationales, 1983-2003*. EPA 903-R-04-008. CBP/TRS 268/04. Chesapeake Bay Program Office, Annapolis, Maryland (2004).
- (iv) *Revision, Chesapeake Bay Program Analytical Segmentation Schemes: decisions and rationales, 1983-2003—2005 Addendum*. EPA 903-R-05-004. CBP/TRS 278/06. Chesapeake Bay Program Office, Annapolis, Maryland (2005).
- (v) *Setting and Allocating the Chesapeake Bay Basin Nutrient and Sediment The Collaborative Process, Technical Tools and Innovative Approaches. Loads*: EPA 903-R-03-007. Region III Chesapeake Bay Program Office, Annapolis, Maryland (2006).

(vi) *Summary of Decisions Regarding Nutrient and Sediment Load Allocations and New Submerged Aquatic Vegetation (SAV) Restoration Goals*. April 25, 2003, Memorandum to the Principals' Staff Committee members and representatives of the Chesapeake Bay headwater states. Virginia Office of the Governor, Natural Resources Secretariat, Richmond, Virginia.

(vii) *The 2002 Chesapeake Bay Eutrophication Model*. EPA 903-R-04-004. U.S. Army Corps of Engineers, Engineer Research & Development Center, Environmental Laboratory (Cerco, C.F., and Noel, M.R., 2004).

(viii) *Ecosystem models of the Chesapeake Bay Relating Nutrient Loadings, Environmental Conditions and Living Resources Technical Report*. Chesapeake Bay Program Office, Annapolis MD (Kemp, MW., R. Bartlescn, S. Blumenshine, J.D. Hagey, and W.R. Boylen, 2000).

(ix) *Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll a for the Chesapeake Bay and Its Tidal Tributaries*. U.S. EPA 2003b. EPA 903-R-03-002. Chesapeake Bay Program Office, Annapolis, Maryland.

(5) For ~~[credits and offsets generated from]~~ A point source[s], the Department may rely on the information supplied by THE permittee[s] in the DMR, **INCLUDING OFFSET INFORMATION**, when ~~[calculating and]~~ certifying A POLLUTANT REDUCTION ACTIVITY TO GENERATE credits ~~[and offsets]~~.

(6) When ~~[calculating and]~~ certifying ~~[credits and offsets]~~ **A POLLUTANT REDUCTION ACTIVITY TO GENERATE CREDITS**, the Department may rely on ~~[additional]~~ methods, data sources and conclusions contained in the *Pennsylvania Agronomy Guide* published by Pennsylvania State University, and the *Pennsylvania Technical Guide* published by the Federal Natural Resources Conservation Service. The Department may also rely on other published or peer-reviewed scientific sources.

(d) *Eligibility requirements for the Chesapeake Bay.*

(1) *General.* To generate credits ~~[and]~~ **OR** offsets, the ~~[generator]~~ **PERSON** shall demonstrate a reduction in THE pollutant load[s] beyond ~~[those that are allowed]~~ **THE POLLUTANT LOAD ALLOWED** under applicable baseline requirements, and **BEYOND** any **APPLICABLE** threshold ~~[established by the Department]~~.

(2) *Baseline requirements to generate credits* ~~[or offsets]~~.

(i) For A nonpoint source[s], THE baseline **IS THE SET OF** ~~[shall be the current]~~ requirements in regulations applicable to the source[s] at the location where the credits or offsets are generated, and the pollutant load associated with that location **AS OF JANUARY 1, 2005. IF SINCE THAT DATE NEW REQUIREMENTS OR OPERATION CHANGES HAVE OCCURRED THAT NECESSITATE A REVISED SET OF REQUIREMENTS THOSE**

ESTABLISH THE BASELINE. For **AN** agricultural operation[s], [~~this~~] **BASELINE** includes compliance with the erosion and sedimentation requirements for agricultural operations in Chapter 102 (relating to erosion and sediment control), the requirements for agricultural operations under § 91.36 (relating to pollution control and prevention at agricultural operations), [~~and~~] **Chapter §92.5a (RELATING TO CAFOS)** (*Editor's note: Placeholder for an editor's note explaining that § 92.5a may soon become §92a.31 (relating to CAFOs.)*) and the requirements for agricultural operations under Chapter 83, Subchapter D (relating to nutrient management), as applicable.

(ii) For **A** point source[s], the baseline [~~shall be~~] **IS** the pollutant effluent load associated with effluent limitations contained in [~~an~~] **THE** NPDES permit based on the applicable technology-based requirements, or the load in a TMDL or similar allocation, whichever is more stringent.

(3) *Threshold requirements to generate credits* [~~or offsets~~].

(i) **IN ORDER TO GENERATE CREDITS,** [~~A~~] **An** agricultural operation must meet one of the following threshold requirements at the location where the credits [~~or offsets~~] are generated. [~~For the purpose of this subparagraph the term "surface water" means a perennial or intermittent stream with a defined bed or bank, a lake or a pond.~~]

(A) Manure is not mechanically applied within 100 feet of [~~surface water~~] **A PERENNIAL OR INTERMITTENT STREAM WITH A DEFINED BED OR BANK, A LAKE OR A POND.** This threshold can be met through one of the following:

(I) There [~~are no surface waters~~] **IS NOT A PERENNIAL OR INTERMITTENT STREAM WITH A DEFINED BED OR BANK, A LAKE OR A POND** on or within 100 feet of the agricultural operation.

(II) The agricultural operation does not mechanically apply manure, and applies commercial fertilizer at or below agronomic rates contained in the current *Penn State University Agronomy Guide* published by Pennsylvania State University.

(B) A minimum of 35 feet of permanent vegetation is established and maintained between the field and [~~surface water~~] **ANY PERENNIAL OR INTERMITTENT STREAM WITH A DEFINED BED OR BANK, A LAKE OR A POND.** The area may be grazed or cropped under a specific management plan provided that permanent vegetation is maintained at all times **AND THERE IS NO MECHANICAL APPLICATION OF MANURE WITHIN THE BUFFER AREA.**

(C) The ~~[overall amount of pollution reduction is adjusted by at least 20%, which is to be applied during the calculation of the reduction amount when the credits are certified by the Department]~~ **APPLICANT APPLIES AN ADJUSTMENT OF AT LEAST 20% TO THE OVERALL AMOUNT OF THE POLLUTANT REDUCTION GENERATED BY THE POLLUTANT REDUCTION ACTIVITY THE PERSON IS SUBMITTING FOR CERTIFICATION.**

(ii) The Department may establish other threshold requirements necessary to ensure the effectiveness of the use of credits ~~[and offsets]~~ to meet legal requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay.

(4) *Compliance status.* ~~A [P] Person[s currently not in compliance with, or who lack the]~~ **WHO BY PAST OR CURRENT NONCOMPLIANCE HAS DEMONSTRATED A LACK OF** ability or intention to comply with[,] any of the following ~~[are]~~ **IS** not eligible ~~[to generate credits or offsets]~~ **FOR CREDIT CERTIFICATION OR OFFSET APPROVAL** or to use credits or offsets to meet permit effluent limits:

(i) ~~A~~ Department regulation[s], permit[s], schedule[s] of compliance, ~~[or]~~ order[s] **OR CERTIFICATION.**

(ii) ~~A~~ ~~[Any]~~ law or regulation that addresses pollution of waters of this Commonwealth.

(iii) ~~A~~ ~~[€]~~ Contract[s] for the exchange of credits.

(5) *Other requirements.* The Department may establish other eligibility requirements to ensure the effectiveness of the use of credits and offsets to meet legal requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay.

(6) *Failure to meet eligibility requirements.* If **AT ANY TIME PRIOR TO REGISTRATION OF A CREDIT** the Department determines that a person no longer meets the eligibility requirements under this section, ~~[it]~~ **THE DEPARTMENT** may take appropriate action, such as prohibiting the person from participating in any trading under this section ~~[and denial of requests for]~~ **OR DENYING A REQUEST FOR** certification, ~~[and]~~ registration of any credits **OR [and] APPROVAL OF** offsets.

(e) *Certification requirements for the Chesapeake Bay.*

(1) *General.* ~~[All credits and offsets]~~ **A POLLUTANT REDUCTION ACTIVITY** must be certified by the Department **FOR THE GENERATION OF CREDITS,** before they may be applied to meet permit effluent limitations.

Certification will serve as the Department's final determination of the ~~[appropriate]~~ amount of credits ~~[approved by the Department]~~ **THAT THE POLLUTANT REDUCTION ACTIVITY MAY GENERATE. A PERMITTEE MAY ONLY USE CREDITS TO MEET PERMIT EFFLUENT LIMITS IF** ~~[€]~~ Certification ~~[must be]~~ **IS** followed by verification and registration of the credits ~~[and offsets prior to their use to meet permit effluent limits.]~~

(2) *Request for certification.* ~~A [P]Person[s]~~ who wish ~~ES~~ to have ~~[credits or offsets]~~ **A POLLUTANT REDUCTION ACTIVITY** certified by the Department **TO GENERATE CREDITS** shall submit a **WRITTEN** request **FOR CERTIFICATION** in the format required by the Department.

(i) The request **FOR CERTIFICATION** must contain information sufficient to demonstrate the following:

(A) **THAT [F]** The location where the pollutant reduction activity will be implemented will meet applicable eligibility requirements under subsection (d)[5] and will continue to meet those requirements throughout the applicable **TERM OF THE CERTIFICATION** ~~[period of time described in the request].~~

(B) **THAT [F]** The pollutant reduction activity ~~[must]~~ **WILL** meet acceptable standards for construction and performance, including operation and maintenance, **THROUGHOUT THE APPLICABLE TERM OF THE CERTIFICATION** ~~[for the applicable period of time described in the request].~~

(C) **THAT [F]** The calculation requirements of this section have been met.

(D) **THAT [F]** The implementation of the pollutant reduction activity ~~[must]~~ **WILL** be verified ~~[to the extent acceptable to the Department,]~~ as described in a verification plan that meets the requirements of paragraph ~~[(4)]~~ **(5)**.

(ii) The request **FOR CERTIFICATION** must contain the following additional information:

(A) A detailed description of how the credits ~~[or offsets]~~ will be generated **BY THE POLLUTANT REDUCTION ACTIVITY**, including calculations, assumptions and photos.

(B) A map illustrating the location(s) of the proposed **POLLUTANT REDUCTION** activity.

(C) Details on the timing of credits ~~[or offsets]~~, such as **THE TIMING OF CREDIT** generation and delivery, **TIMING OF** ~~[any]~~ **A** phase-in period and

the time frame for sale and use OF CREDITS toward[s] permit effluent limits.

(D) The water quality classification under Chapter 93 (relating to water quality standards), and any applicable impairment listings under section 303(d) of the Federal Water Pollution Control Act (33 U.S.C.A. § 1313(d)), for the [~~nearest~~] receiving stream segment NEAREST THE LOCATION OF THE PROPOSED POLLUTANT REDUCTION ACTIVITY.

(E) Information on [~~any~~] source[s] of funding used to pay for any portion of the pollutant reduction activity, including the dollar amount and any conditions and restrictions regarding the use of [~~those~~] THE funds toward[s] the generation or sale of credits [~~or offsets~~].

(F) A description of how risks of failure of the pollutant reduction activity [~~shall~~] WILL be managed, such as the use of financial guarantee mechanisms, contractual arrangements, [~~permits,~~] insurance products OR [~~and~~] reduction of the concentration of projects in a particular sub-watershed.

(G) A description of [~~any~~] preservation and conservation easements on lands where the pollutant reduction activity is to be implemented.

(H) IDENTIFICATION OF [N] Notations on documents submitted in the request which the person submitting the request claims to be confidential business information or a protected trade secret [~~that are~~] protected from disclosure by law, and a justification for the claims.

(I) The name[s] of the person[s] submitting the request and [~~other~~] THE NAMES OF THE participants involved in the pollutant reduction activity.

(J) THE [P] Professional qualifications of the persons who completed the calculations, conducted the baseline and threshold determinations [~~and~~] OR otherwise contributed to the technical merit[s] of the request.

(K) Contact information for the person[s] submitting the request.

(3) *Calculation requirements.* The following credit [~~and offsets~~] calculation requirements apply:

[~~(i)~~—**All calculations must be approved by the Department.**]

[~~(ii)~~] **(i)** The calculations must demonstrate [~~that~~] HOW the pollutant reductions will be achieved from the PROPOSED POLLUTANT REDUCTION activity [~~proposed or implemented~~] to generate credits [~~and offsets~~] for the applicable period of time.

~~(iii)~~ **(ii)** The pollutant reductions must be expressed in pounds per year.

~~(iv)~~ **(iii)** The calculations used must be based on methodologies that the Department determines are appropriate under subsection (c).

(iv) THE CALCULATION FOR A POINT SOURCE MAY INCLUDE EXCESS LOAD CAPACITY ATTRIBUTABLE TO ACTIVITIES SUCH AS EFFLUENT CONTROLS OR THE USE OF OFFSETS.

(v) THE CALCULATION MUST INCLUDE A 10% SET ASIDE FOR THE DEPARTMENT'S CREDIT RESERVE.

~~(v)~~ **(vi)** The Department may establish other calculation requirements necessary to ensure that the use of credits ~~[and offsets are]~~ **IS** effective in meeting water quality requirements, and to address uncertainty for reasons such as unforeseen events ~~[which]~~ **THAT** may disrupt pollutant reduction activities. The ~~[criteria]~~ **CALCULATION REQUIREMENTS** may include the need to use trading ratios, risk-spreading mechanisms and credit reserves. These calculation requirements may reduce the amount of credits ~~[and offsets]~~ **THE DEPARTMENT MAY CERTIFY** ~~[which will be certified]~~ for a pollutant reduction activity ~~[by the Department]~~.

(4) OTHER REQUIREMENTS CONSIDERED FOR CERTIFICATION.

~~(vi)~~ **(i)** The annual sum of all credits certified from nonpoint sources **IN THE COMMONWEALTH'S PORTION OF THE CHESAPEAKE BAY WATERSHED** may not exceed the applicable tradable load calculated by the Department **FOR THE COMMONWEALTH'S PORTION OF THE CHESAPEAKE BAY WATERSHED.** ~~[The tradable load for the Chesapeake Bay Watershed is 5.7 million pounds of nitrogen per year and 396,800 pounds of phosphorus per year, unless otherwise revised by the Department.]~~ **THE TRADABLE LOAD WILL BE AVAILABLE ON THE DEPARTMENT'S NUTRIENT TRADING WEBSITE.**

~~(vii)~~ **(ii)** If State or Federal funds are used to cost-share any portion of the pollutant reduction activity contained in the request for certification, the Department may allow the portion of the credits or offsets paid for by State and Federal funds to be available for certification, unless **TO RESTRICT TRADING OF THAT PORTION OF THE CREDITS** restrictions have been placed on the funds by the provider of the funds.

(iii) THE DEPARTMENT WILL NOT CERTIFY A REQUEST THAT INCLUDES A POLLUTANT REDUCTION ACTIVITY RELATED TO A FARM LAND CONVERSION ACTION THAT INCLUDES THE PURCHASE AND IDLING OF A WHOLE FARM OR A SUBSTANTIAL PORTION OF A FARM TO PROVIDE CREDITS FOR USE OFFSITE.

THE DEPARTMENT WILL NOT CERTIFY A REQUEST THAT INCLUDES A POLLUTANT REDUCTION ACTIVITY RELATED TO A FARM LAND CONVERSION ACTION THAT INCLUDES FARMLAND THAT IS CONVERTED FROM AGRICULTURAL LAND TO ANOTHER DEVELOPMENT TYPE SUCH AS COMMERCIAL OR RESIDENTIAL. HOWEVER, TO SUPPORT FARM LAND CONSERVATION PROGRAMS, IF A PORTION OF FARM LAND IS RETIRED OR CONVERTED THROUGH A PROGRAM SUCH AS ONE OF THE FOLLOWING, THE ACTION MAY BE ELIGIBLE FOR CERTIFICATION;

(A) U. S. DEPARTMENT OF AGRICULTURE'S FARM SERVICES AGENCY CONSERVATION RESERVE PROGRAM (CRP) ;

(B) U. S. DEPARTMENT OF AGRICULTURE'S CONSERVATION RESERVE ENHANCED PROGRAM (CREP);

(C) U. S. DEPARTMENT OF AGRICULTURE'S NATURAL RESOURCES AND CONSERVATION SERVICE'S ENVIRONMENTAL QUALITY INCENTIVES PROGRAM (EQIP).

~~[(4)]~~ **(5)** *Verification plan.* A request for certification must contain a verification plan.

(i) The verification plan must include the methods for credit ~~[and offset]~~ verification, such as the documentation of the implemented pollutant reduction activity, sufficient to allow the Department to verify that the **POLLUTANT REDUCTION ACTIVITY IN THE CERTIFICATION WAS** ~~[qualifying reduction efforts approved were]~~ properly implemented during the applicable compliance period.

(ii) **THE V[V]erification plan[s] [may] MUST ALSO include ONE OF the following methods[.]. THE METHOD CONTAINED IN THE VERIFICIATION PLAN IS** subject to approval by the Department:

(A) Self-verification by the person responsible for implementing the pollutant reduction activity.

(B) Third-party verification.

~~[(5)]~~ **(6)** *Certification by the Department.* The Department will certify ~~[credits and offsets,]~~ **A POLLUTANT REDUCTION ACTIVITY** when it has determined that the requirements of paragraphs (1) - ~~[(4)]~~ **(5)** have been met. **IN ADDITION, THE FOLLOWING APPLY:**

(i) THE DEPARTMENT MAY MAKE A [€] Certification[s may be made] contingent on conditions to [~~that will~~] ensure that the requirements of this chapter will be satisfied.

(ii) THE DEPARTMENT MAY ONLY CERTIFY THE POLLUTANT REDUCTION ACTIVITY THAT WILL GENERATE [€] Credits [and offsets] FOR USE [must only be used] to meet permit effluent limits for the compliance period for which they are certified, verified and registered [~~by the Department~~] under this section.

(iii) THE DEPARTMENT WILL ONLY APPROVE A [R] Request[s] for certification for multiple compliance periods [~~may be approved by the Department, but they must be~~] IF THE POLLUTANT REDUCTION ACTIVITY THAT WILL GENERATE THE CREDITS WILL BE verified and registered separately for each compliance period.

(7) COMPLIANCE. A PERSON TO WHOM THE DEPARTMENT ISSUES A CERTIFICATION UNDER THIS SECTION SHALL COMPLY WITH THE TERMS AND CONDITIONS OF THE CERTIFICATION.

(8) DURATION OF CERTIFICATION. THE TERM OF A CERTIFICATION IS 5 YEARS, UNLESS THE CERTIFICATION EXPRESSLY STATES OTHERWISE. TO OBTAIN A CERTIFICATION TERM LONGER THAN 5 YEARS, A PERSON REQUESTING CERTIFICATION SHALL DEMONSTRATE TO THE DEPARTMENT'S SATISFACTION THAT A LONGER TERM IS WARRANTED BASED ON TECHNOLOGICAL OR ECONOMIC FACTORS, TAKING INTO CONSIDERATION THE REQUIREMENTS FOR RESTORATION, PROTECTION AND MAINTENANCE OF THE WATER QUALITY OF THE CHESAPEAKE BAY.

(9) RENEWAL OF CERTIFICATION.

(i) A PERSON SEEKING RENEWAL OF A CERTIFICATION MUST SUBMIT A WRITTEN REQUEST FOR RENEWAL AT LEAST 180 DAYS PRIOR TO THE EXPIRATION OF THE CERTIFICATION.

(ii) THE DEPARTMENT WILL PROVIDE PUBLIC NOTICE AND AN OPPORTUNITY FOR INFORMAL COMMENT WHEN AN ADMINISTRATIVELY COMPLETE REQUEST IS SUBMITTED.

(iii) THE DEPARTMENT'S FINAL DETERMINATION ON A REQUEST FOR RENEWAL WILL BE BASED ON THE REQUIREMENTS OF THIS SECTION AND ON OTHER APPLICABLE LAWS, WATER QUALITY STANDARDS AND REQUIREMENTS IN EFFECT AT THE TIME OF THE DEPARTMENT'S DETERMINATION.

(iv) BY _____ (Editor's note: The blank represents a date 180 days less than 5 years after the effective date of this final-form rulemaking.), **THE RECIPIENT OF A CERTIFICATION ISSUED PRIOR TO _____ (Editor's note: The blank represents the effective date of this final-form rulemaking.) SHALL SUBMIT A REQUEST FOR RENEWAL OF THE CERTIFICATION. THE DEPARTMENT WILL PROCESS THE REQUEST IN ACCORDANCE WITH THIS PARAGRAPH. THIS SUBPARAGRAPH DOES NOT APPLY TO A CERTIFICATION CONTAINING AN EXPIRATION DATE.**

(10) REVOCATION. THE DEPARTMENT MAY REVOKE A CERTIFICATION FOR FAILURE TO COMPLY WITH THE CONDITIONS OF THE CERTIFICATION.

(f) VERIFICATION REQUIREMENTS FOR THE CHESAPEAKE BAY.

(1) GENERAL. CREDITS MUST BE VERIFIED PRIOR TO REGISTRATION. THE FOLLOWING APPLIES TO VERIFICATION:

~~[(1)]~~ **(2) VERIFICATION MUST BE CONDUCTED AS DESCRIBED IN THE APPROVED VERIFICATION PLAN.**

~~[(2)]~~ **(3) VERIFICATION MUST DEMONSTRATE THAT THE POLLUTANT REDUCTION ACTIVITY HAS BEEN IMPLEMENTED AS DESCRIBED IN THE CERTIFICATION, AND THAT OTHER REQUIREMENTS, SUCH AS BASELINE AND THRESHOLD, ARE MET.**

~~[(3)]~~ **(4) THE DEPARTMENT MAY CONDUCT OTHER VERIFICATION ACTIVITIES, SUCH AS MONITORING AND CONDUCTING INSPECTIONS AND COMPLIANCE AUDITS, TO ENSURE THAT THE POLLUTANT REDUCTION OBLIGATIONS ARE BEING MET.**

~~[(f)]~~ **(g) Registration requirements for the Chesapeake Bay.**

(1) *General.* ~~[All e]~~ **Credits [and offsets used to comply with effluent limitations in NPDES permits]** must be registered by the Department before they may be applied to a permit to meet ~~[the]~~ effluent limitations.

(2) *Registration requirements.* The following registration requirements apply:

(i) Credits ~~[and offsets]~~ must be certified under the provisions of subsection (e).

(ii) Credits must be addressed in a valid contract ~~[which]~~ **THAT** ensures that the requirements of this section will be met. ~~[The Department may require submittal of trade contracts, establish basic contract elements and require approval of trade contracts before registration.]~~

(iii) The credits [~~and offsets~~] must be verified prior to registration, **UNDER SUBSECTION (f).** [~~The following applies to verification:~~]

~~[(A) Verification must be conducted as described in the verification plan as approved by the Department in the certification.]~~

~~[(B) Verification must ensure that the pollutant reduction activity has been implemented as described in the certification, and that other requirements such as baseline and threshold are met.]~~

~~[(C) The Department may conduct other verification activities such as monitoring, inspections and compliance audits, to further ensure that the pollutant reduction obligations are being met.]~~

(iv) The Department will assign a registration number **TO EACH REGISTERED CREDIT** for reporting and tracking purposes.

(3) *Failure to implement.* The Department will not register credits [~~and offsets~~] if the person who generates the credits has not implemented, or [~~who~~] demonstrates a lack of ability or intention to implement, operations and maintenance requirements contained in the certification, [~~or the~~] verification plan, or [~~otherwise to implement the~~] **OTHER REQUIREMENTS** of this section. The Department will not register credits [~~and offsets~~] submitted by an aggregator that is currently not complying, or demonstrates a lack of ability or intention to comply, with this section.

~~[(g)]~~ (h) *Use of credits and offsets to meet NPDES permit requirements related to the Chesapeake Bay.*

(1) A [P] Permittee[s] will only be authorized to use credits and offsets through the provisions of [~~their~~] **ITS** NPDES permit. The permit conditions will require appropriate terms, such as recordkeeping, monitoring and tracking, and reporting in DMRs.

(2) Only credits and offsets generated from activities located within the Chesapeake Bay [~~w~~]**Watershed** may be used to meet NPDES permit requirements related to the Chesapeake Bay. Credits generated in either the Susquehanna or [~~the~~] Potomac basins may only be used in the [~~same~~] basin **IN WHICH THEY WERE GENERATED,** unless otherwise approved by the Department.

(3) A [P] Permittee[s] shall ensure that the credits and offsets that [~~they apply~~] **THE PERMITTEE APPLIES TO** [~~their~~] **ITS** permit[s] for compliance purposes are certified, verified and registered, **OR APPROVED,** [~~by the Department~~] under this section for the compliance period in which they are used.

(4) The Department may authorize a period **OF** [~~not to exceed~~] 60 days **OR LESS** following the completion of the annual compliance period in an NPDES permit, for a

permittee to come into compliance through the application of credits and offsets to the permit provided that the credits ~~[and offsets]~~ were registered **AND OFFSETS WERE APPROVED FOR USE** during that compliance period.

(5) **A PERMITTEE RELYING ON CREDITS TO DEMONSTRATE COMPLIANCE WITH ITS PERMIT EFFLUENT LIMITATIONS, CONDITIONS AND STIPULATIONS PURSUANT TO CHAPTER 92 (RELATING TO NPDES PERMITS)** *(Editor's note: Placeholder for an editor's note explaining that Chapter 92 may soon be Chapter 92a, so that "92a" will replace "92" here.)* **MUST ATTAIN AND MAINTAIN COMPLIANCE WITH ITS PERMIT. A [P] Permittee[s] [are] IS** responsible for enforcing the terms of ~~[their]~~ **ITS TRADE [credit and offset] contract[s]**, when needed to ensure compliance with ~~[their]~~ **ITS** permit. The Department may waive this requirement where the pollutant reduction activity fails due to uncontrollable or unforeseeable circumstances such as extreme weather conditions, and timely notice is provided to the Department, if the following apply:

- (i) The failure is not due to negligence or willfulness on the part of the permittee.
- (ii) The Department determines that replacement credits will be available.
- (iii) The Department determines that the requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay will be met due to the requirements of this section, which may include the type of methodologies used when ~~[calculating the certified]~~ **CERTIFYING** credits, the existence of an approved legal mechanism that is enforceable by the Department, and the use of a credit reserve.

~~[(5)]~~ **(6) A PERMITTEE SHALL DOCUMENT [The] The use of credits and offsets [must be identified] in DMR forms, which THE PERMITTEE SHALL [will be] submit[ted] at the end of each compliance year or as otherwise provided [by the Department] OR REQUIRED in the permit. [Registered] [e] Credits and offsets shall only be used to meet permit effluent limits for the compliance period for which they are certified, verified and registered, OR APPROVED, by the Department under this section.**

~~[(4)]~~ **(i) Water quality and TMDLs.**

(1) Use of credits and offsets under this section will be allowed only where surface water quality will be protected and maintained as required by applicable regulations, including this ~~[e]~~ **Chapter, Chapters 92** *(Editor's note: Placeholder for an editor's note explaining that Chapter 92 may soon be Chapter 92a, so that "92a" will replace "92" here)* and ~~[Chapter]~~ **93, AS WELL AS** Department permits, ~~[and]~~ schedules of compliance and orders.

(2) Use of credits and offsets under this section must ensure that there is no net increase in discharge of pollutants to the compliance point used for purposes of determining compliance with the water quality standards established by the states of Maryland and Virginia for restoration, protection and maintenance of water quality of the Chesapeake Bay.

(3) Where a TMDL has been established for the watershed where the permitted activity is located, the use of credits and offsets under this section will be consistent with the assumptions and requirements upon which the TMDL is based.

(4) Use of credits and offsets under this section will comply with the antidegradation requirements contained in Department regulations.

~~[(j)]~~ **(i)** *Public participation.* The Department will publish a notice in the *Pennsylvania Bulletin* of the receipt of administratively complete requests for certifications of **A POLLUTANT REDUCTION ACTIVITY TO GENERATE** credits ~~[and offsets, and the Department's final determinations regarding those requests]~~. **THE NOTICE WILL PROVIDE AN OPPORTUNITY FOR INFORMAL COMMENTS.** This notice is not required to follow the requirement~~s~~ of § 92.61 (relating to public notice of permit application and public hearing). *(Editor's note: Placeholder for an editor's note explaining that the relevant provisions of § 92.61 may soon become embodied in §92a.82 (relating to public notice of permit applications and draft permits), which will replace §92.61 here.)* **THE DEPARTMENT WILL ALSO PUBLISH NOTICE IN THE PENNSYLVANIA BULLETIN OF ITS FINAL CERTIFICATION DETERMINATION.**

~~[(j)]~~ **(k)** *Use of credits and offsets generally.* Nothing in this section precludes the Department from allowing the use of credits and offsets to be used to meet permit limits ~~[in areas]~~ other than those established for restoration, protection and maintenance related to the water quality of the Chesapeake Bay.