

EXECUTIVE SUMMARY

WATER QUALITY STANDARDS IMPLEMENTATION (25 PA CODE, CHAPTER 96)

In 2005, new water quality standards under the federal Clean Water Act became effective to address the nutrient and sediment pollution problems of the Chesapeake Bay. To meet these new requirements under federal law, the U.S. Environmental Protection Agency and the affected states developed a maximum nutrient load, or “cap load”, for each major tributary. As a result, approximately 200 municipal sewage treatment plants, new or expanding sewage treatment plants, and others discharging nutrients to Pennsylvania’s Bay tributaries are required to cap those discharges or they will be in violation of the downstream water quality standards, under both federal and state law.

In January 2006, the Department initiated an intensive stakeholder process related to these new legal requirements. After receiving input through a series of meetings held over a nine month period, the Department developed a plan to address the new legal mandate. The plan included new permitting requirements for sewage treatment plants and other “point sources” governed by the federal National Pollutant Discharge Elimination System (NPDES), new regulations controlling agricultural run-off, and the development of a Nutrient and Sediment Reduction Trading Program. In December of 2006, after extensive public input, the Department finalized a policy entitled “Final Trading of Nutrient and Sediment Reduction Credits – Policy and Guidelines; No. 392-0900-001”, to guide the implementation of the program.

The Water Quality Standards Implementation proposed rulemaking proposes to amend 25 *Pa Code*, Chapter 96 in order to codify into regulation the Department’s existing Nutrient Credit Trading Policy. The regulations were initiated at the request of interested stakeholders who wanted clear and concise rules to govern how nutrient and sediment reduction credits would be traded in Pennsylvania. This rulemaking addresses the needs of stakeholders by establishing definitions for terms widely used in nutrient and sediment reduction trading transactions, specifying the location for where trading may occur; outlining the methodology to be used to calculate nutrient reduction credits and offsets, and identifying eligibility requirements related to the generation of credits and offsets. The rulemaking also identifies certification, verification and registration requirements, identifies the requirements for use of credits and offsets to meet NPDES permit requirements, specifies how the use of credits and offsets can occur within defined TMDLs and outlines the process for public participation. The proposed regulations also include a section for use of credits and offsets in areas other than those identified for the restoration, protection and maintenance of the water quality of the Chesapeake Bay.

The requirements included in the proposed rulemaking are not mandatory unless entities voluntarily choose to meet their nutrient cap load requirements through participation in the Nutrient Credit Trading Program. Participation in the program is viewed as a cost effective alternative for stakeholders, including wastewater treatment facilities, farmers and other landowners, developers and aggregators to meet federal

and state nutrient and sediment reduction requirements as it provides options to facilities subject to new limits for nitrogen, phosphorus and sediment to meet those limits by working with other facilities and/or with nonpoint sources.

The Department consulted with a number of boards and committees throughout the process of developing the Nutrient Credit Trading Policy, and most recently, this proposed rulemaking. Specifically, the Department presented this rulemaking to the Water Resources Advisory Committee (WRAC) on June 19, 2009, and again on July 22, 2009, with a revised draft in response to comments. The WRAC endorsed, with provisions, this proposed rulemaking package at their July 2009 meeting. This proposed rulemaking was also presented to the Agricultural Advisory Board (AAB) on August 19, 2009, where very few comments or concerns were raised. At the request of the AAB, the Department will provide an additional presentation at an AAB meeting during the rulemaking's public comment period. This proposed rulemaking and preamble reflect the provisions made by the WRAC during the July meeting.

The adoption of this rulemaking will provide the Commonwealth with a valuable and predictable tool to help meet current water quality standards, the forthcoming Chesapeake Bay TMDL, and the milestones towards the new national effort to restore the Chesapeake Bay by 2025. Given the extensive public outreach already dedicated to the development of the policy and now the proposed rulemaking, the Department recommends a 30-day public comment period on the proposal.