

PENNSYLVANIA MUNICIPAL AUTHORITIES ASSOCIATION

SUMMARY OF COMMENTS ON PROPOSED RULEMAKING

25 PA CODE CHAPTER 96.8

A. Offsets vs. Credits - Proposed new section 96.8 addresses the use of “offsets” and tradable “credits” from pollution reduction activities in the Chesapeake Bay watershed. Because “offsets” are fundamentally different than “credits”, treating these two concepts identically in this regulation will be very problematic for both the Department and entities subject to this regulation. It should also be noted that the term “offset” is specifically defined in current NPDES permit boilerplate language, which differs from the proposed definition in 96.8.

There are currently two recognized offsets that are associated with:

- 1) connecting homes with septic tanks to municipal sewer systems
- 2) shifting effluent loads between treatment facilities owned by a single entity

As such, offsets are used to directly adjust a point source's annual cap load. Offsets are not impacted by delivery ratios or edge of segment ratios or reserve ratios, and they are not certified, verified or registered with DEP in the same manner as credits.

The term “offset” should be removed from several subsections of the regulation as described in our detailed comments.

B. Program uncertainty created by the regulations - Throughout the subsections, there seems to be some ambiguity in the Department’s having the ability to readjust BMP reduction efficiencies, thresholds, delivery ratios, etc. To maintain confidence and stability in the trading program, it must be stated clearly in the regulation that once credits are verified, registered and sold, the number of pounds of credits is guaranteed for the current or future years for which they are purchased and cannot be reduced based on further review of how they were originally determined. This is a significant consideration for both buyers and sellers of credits.

C. Credit Generation Baseline Considerations – The Department’s proposed definition of “baseline” and language in 96.8(d)(2) prevents point sources and others from generating Bay-related credits if their local TMDL limits result in greater reductions than needed to comply with their Bay annual cap loads. This restriction should be removed. For point sources, the baseline should simply be the annual cap load required for the Bay. Any reductions beyond that should be eligible for credit generation, while still meeting local TMDL reduction needs.

D. Responsibility for Credits – Subsection 96.8(g)(5) would make NPDES permittees responsible for the failure of credit generators to produce the required amount of credits needed. Permittees must be “held harmless” from such circumstances. If this language is retained in the final regulation, there will be little interest on the part of permittees to pursue credit trading (buying or selling).