

Executive Summary

Title 25, Chapter 96, Water Quality Standards Implementation

The final-form rulemaking will amend 25 *Pa. Code*, Chapter 96 (relating to Water Quality Standards Implementation) to codify into regulation, with revisions, the Department's existing guidance entitled Final Trading of Nutrient and Sediment Reduction Credits – Policy and Guidelines (No. 392-0900-001, December, 2006) as it relates to the Chesapeake Bay (“Nutrient Credit Trading Policy”). This final-form rulemaking will provide clear and certain standards for nutrient and sediment credit trading in Pennsylvania and thereby support the Department's efforts to implement the existing program.

The primary benefit of the Nutrient Credit Trading Policy and thus this final-form rulemaking is that it provides a cost-effective means for facilities subject to limits for nitrogen, phosphorus and sediment to meet those limits by working with other facilities and/or with nonpoint sources. Developers may also take advantage of the program by providing an option to meet the zero net load while allowing new growth and economic development to occur. It also helps the Commonwealth achieve its Chesapeake Bay nutrient reduction goals from the agriculture sector, and provides a source of revenue to farmers and other property owners while advancing the restoration and protection of the water quality of the Chesapeake Bay.

The Chesapeake Bay is polluted from nutrients and sediment and in 2005 water quality standards under the federal Clean Water Act to address this pollution came into effect. To meet these requirements under Federal law, the U.S. Environmental Protection Agency (EPA) 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 Commonwealth's Bay tributaries must cap those discharges or they will be in violation of the downstream water quality standards, under Federal and State law.

In January 2006 the Department initiated an intensive stakeholder process related to these legal requirements. First, it refocused and expanded the standing Chesapeake Bay Advisory Committee of the Department, to include local government associations, the agricultural community, and multiple trade and business associations. This Committee was tasked with discussing the wide variety of issues surrounding the Commonwealth's compliance strategy and to consider various approaches to meeting the Federally driven water quality obligations.

After receiving input through a series of meetings held over a 9-month period, the Department developed a revised plan to address the legal mandate. The plan included permitting requirements for sewage treatment plants and other “point sources” governed by the Federal National Pollutant Discharge Elimination System (NPDES), regulations controlling agricultural run-off, and the Nutrient Credit Trading Policy.

The Department, along with a number of stakeholders, is in the process of developing the Watershed Implementation Plan (WIP) for the Chesapeake Bay TMDL that EPA will establish soon. The WIP will be Pennsylvania's plan for how the commonwealth will achieve and maintain the Bay TMDL nitrogen, phosphorus, and sediment target allocations necessary to meet Bay water quality standards. Pennsylvania has outlined that our approach will consist of three core elements:

- 1) Milestone implementation and tracking (for point and nonpoint sources);
- 2) Enhancing compliance efforts; and
- 3) Supporting the implementation of advanced technologies and nutrient trading.

The benefits and use of nutrient trading will play into the overall approach for meeting and maintaining water quality standards necessary for the protection and restoration of the Chesapeake Bay.

This final-form rulemaking affects any facility subject to cap loads for nutrients or sediment related to restoration and protection of the Bay, mostly wastewater treatment facilities. It does not impose any obligations on them, unless they opt to take advantage of the cost-saving benefits of the trading program. It also affects farmers, who may voluntarily choose to implement nutrient or sediment reduction measures and thereby earn revenue through the trading program. Developers may also take advantage of the program by providing an option to meet the zero net load while allowing new growth and economic development to occur.

The Department has consulted with a number of boards and committees throughout the process of developing the Nutrient Credit Trading Policy, the proposed rulemaking and this final-form rulemaking. The Department presented a summary of comments received on the proposed rulemaking to the Water Resources Advisory Committee (WRAC) on April 14, 2010 and then presented the final-form rulemaking to the WRAC on May 11, 2010. At that meeting, the WRAC endorsed the final-form rulemaking. The Department presented a summary of comments received on the proposed rulemaking to the Agricultural Advisory Board (AAB) on April 21, 2010. The AAB raised few comments or concerns.

The proposed rulemaking was published at 40 Pa.B. 876 (February 13, 2010), with a 30-day public comment period. The public comment period closed on March 15, 2010. No public hearings were held. Based on the 10 sets of comments received and discussions with WRAC and AAB, the Department clarified and distinguished the processes applicable to credits and offsets, added a provision for stormwater best management practices, established a 10% credit reserve ratio, added a farmland preservation provision, added duration, renewal and revocation provisions, and generally added certainty wherever feasible to the final-form rulemaking.