



Consideration of Final-Form Rulemaking
Water Quality Standards Implementation
25 Pa Code, Chapter 96

Environmental Quality Board
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Formula for Nutrient Trading:

- DRIVEN by regulation;
- MOTIVATED by economics;
- GOVERNED by local trading rules;
- BUILT on trust.



Development of Rulemaking:

- 2003 - Discussion on the Pfizer Voluntary Trade began.
- 2004 - Chesapeake Bay Tributary Strategy issued.
- 2005 - Interim Final Policy published in October.
- 2006 – Open dialog process held with stakeholders to develop and define the program. In December the Final Policy was published.
- 2007 to Present - Program implementation, outreach and enhancements have been made.



Major Provisions of Chapter 96:

- Key areas of the final-form rulemaking include:
 - 96.8 (c) Methodology
 - 96.8 (d) Eligibility Requirements for the Chesapeake Bay
 - 96.8 (e) Certification Requirements for the Chesapeake Bay
 - 96.8 (f) Verification Requirements for the Chesapeake Bay
 - 96.8 (g) Registration Requirements for the Chesapeake Bay
 - 96.8 (h) Use of credits and offsets to meet NPDES requirements related to the Chesapeake Bay
 - 96.8 (k) Use of credits and offsets generally

Overview of major comments submitted on the proposal during the public comment period:


- The proposed rulemaking was published on February 13, 2010 with a 30-day public comment period.
- A summary of major comments submitted includes:
 - concerns that the credit life should be greater than a year;
 - questions on the use of ratios for point source generated credits and when credits are applied to permit requirements;
 - Requests for clarification on the applicable process for credits and offsets;
 - concerns with the use of the term “offsets”;
 - questions the baseline requirement as it relates to local TMDLs and the generation of credits; and
 - a few submitted that the rulemaking did not provide enough stability and certainty.



Overview of major revisions:

The Department has made the following revisions:

- clarified and distinguished the processes applicable to credits and offsets;
- added a provision for stormwater best management practices for purposes of credit generation;
- established a 10% credit reserve ratio;
- added a farmland preservation provision;
- added duration, renewal, and revocation provisions for credit certifications; and,
- added certainty wherever feasible.



Anticipated results of the Nutrient Trading Program:

- Cost-effective solutions.
- Flexible compliance alternatives.
- No new costs.



Cost-savings of Program Participation:

Participation in the nutrient trading program is voluntary. Those that may be able to take advantage of the cost-savings of the program are:

- any facility subject to a nutrient or sediment load that is related to restoration and protection of the Bay, mostly wastewater treatment facilities;
- any farmer who may voluntarily choose to implement nutrient or sediment reduction measures and thereby earn revenue;
- any developer that seeks to create a new or expanding discharge that must meet the zero net load; and
- any aggregator that seeks to arrange for the sale of credits generated by another person, or arranges for the credits to be certified, verified and registered.



Advisory Committee and EPA Review:

- Water Resources Advisory Committee (WRAC)
 - The Department presented a summary of comments received on the proposed rulemaking in April 2010 and presented the final-form rulemaking on May 2010.
- Agricultural Advisory Board (AAB)
 - The Department presented a summary of comments received on the proposed rulemaking in April 2010.
- EPA review of the policy and the rulemaking.



Recommendation:

- Board approval of the final-form rulemaking.



Thank you.

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