

CHESAPEAKE BAY INTERSTATE NUTRIENT TRADING POLICY

I. FUNDAMENTALS:

A. General

Interstate trading of nutrients can be both an environmentally beneficial and cost-effective way for EPA and the states to address large-scale water quality issues. The fundamental requirement of interstate trading is that such trading must comply with applicable laws and regulations, including the federal Clean Water Act, and the result of such trading must be consistent with any applicable Water Quality Standards, and any local or watershed-based Total Maximum Daily Load ("TMDL"). This interstate nutrient trading policy for verified nutrient reductions in the Chesapeake Bay ("Policy"), conforms to the aforementioned objectives.

B. Pollutants Subject to Policy

This Policy deals with (1) nitrogen and phosphorus, the main pollutants of concern in many watersheds throughout the country.

This Policy will be consistent with the following principles: (1) trades must involve comparable credits (e.g. phosphorus must be traded for phosphorus), unless EPA and the state or states in which a trade occurs (such states also referred to as "Applicable Jurisdictions") provide express approval for an inter-pollutant trade involving nitrogen and phosphorus; (2) trades must be expressed as mass per unit time (e.g. pounds per year); (3) trades can occur only between eligible parties; and (4) credits must be verifiable with appropriate accountability and tracking mechanisms. Nothing herein, however, shall be deemed to apply to wholly intrastate trades, which shall remain subject only to the trading policy of the Applicable Jurisdiction.

C. Definitions

- *Offset* -- Means (a) a reduction in the loading of a pollutant of concern from a source or sources that is used to compensate for the loading of a pollutant of concern from a different point or nonpoint source in a manner consistent with meeting a Water Quality Standard or (b) compensating for the loading of a pollutant of concern from a point or nonpoint source with a reduction in the loading from a different source or sources, in a manner consistent with meeting Water Quality Standards.
- *Credit* -- Means a measured unit of nitrogen or phosphorus pollution reduction per unit of time at a location designated and standardized by an Applicable Jurisdiction that can be generated, sold or traded as part of an offset.
- *Offsets Baseline* -- Means the amount of pollutant loading allowed by wasteload allocation or load allocation that applies to individual credit generators in the absence of offsets.

D. Trading Guidelines

Trading may occur at any location within the Chesapeake Bay Watershed, even if any part of the watershed extends beyond a state's borders. By way of example, trading may occur between entities in different states or jurisdictions (e.g., Pennsylvania entities selling credits generated within Pennsylvania may sell such credits to an eligible party in Maryland). Such trading may occur between and among point sources, non point sources and third parties, but only if any discharges covered by a trade do not cause an exceedance of applicable state water quality standards and are consistent with any applicable TMDL.

E. Eligibility

In order to be eligible to trade, an entity must meet the following eligibility criteria established by this Policy:

1. Interstate trading under this Policy will be limited to verified credits generated under an EPA approved verification plan methodology ("Verification Plan Methodology").
2. Any entity involved in a trade must be compliant with all applicable requirements of the Clean Water Act and its implementing regulations, and any state environmental law or regulation, before a trade involving such entity will be permitted under this Policy. However, an entity may be eligible to purchase credits in order to comply with any of the aforementioned requirements, including the offset requirements of an Applicable Jurisdiction.

F. Process for Approving and Tracking Credits

The Applicable Jurisdiction is responsible for approving and tracking all credits once EPA has approved the Verification Plan Methodology for projects that will be used to generate such credits.

1. Calculation of Credits

All credit generation calculations must be in accordance with an approved EPA Verification Plan Methodology. Credits must be expressed in terms that correspond to the unit of compliance and a time period (e.g., pounds per year). Credits need to be measured, verified and accounted for according to that time period. Proposals to generate credits must include adequate provisions for verification throughout the credit generating life span of the project.

2. Guidelines for Proposals to Establish Reduction Credits

a) *Elements Needed for Credit-Generating Projects.* The general information required for credit proposal submittals is as follows:

1. Name and location of the Credit Generator

2. Applicable Watershed and/or Watershed Segments where the credits are generated.

3. The “designated use” specification of the stream or streams where the trade will occur, along with any specific impairment listings applicable to such stream or streams, and whether such stream or streams are subject to a TMDL

4. The offsets baseline and the applicable Point or Non-point Source Reductions, including a description of such reductions, the stream or watershed area of reductions and the pollutants reduced in that area

5. The EPA Verification Plan Methodology to support the trade

3. Proposal Review

EPA will review proposals for the generation of credits for technical acceptability, and consistency with other policy and legal requirements. EPA will conduct such review as expeditiously as possible. Following such review, EPA will respond in writing to the applicant with its determination. If EPA is satisfied that the information provided in the proposal meets the requirements described in this Policy, it will issue a letter indicating its approval of the Verification Plan Methodology and, thereby, certify the credits generated under the Proposal. If a Proposal is not approved, EPA will provide specific comments regarding any deficiencies under the Proposal which the applicant may then address in order to have its Proposal accepted.

4. Verification

a) *General.* Every proposal must have a plan for verifying the nutrient credits requested by the generator of such credits. EPA will approve the Verification Plan Methodology for such verification, if such methodology will ensure that the credits generated will produce the expected pollutant reductions. In making this determination, EPA will evaluate the proposal’s record keeping accounting, monitoring, reporting, inspections, and any other activity deemed appropriate to ensure that obligations applicable to the generator of credits are being met.

b) *Applicable Jurisdiction Verification.* Upon notice by EPA, the Applicable Jurisdiction will verify that the generator of the credits meets the threshold requirements of the trading program. This shall involve a process established by EPA and must occur before credit approval.

5. Registration and Tracking

Once a specific Verification Plan Methodology for generating credits is approved by EPA, EPA will no longer be required to review or approve projects using the approved Verification Plan Methodology and the credits generated by that process in any subsequent project.