

MEMBER
JURISDICTIONS

March 19, 2015

CHESAPEAKE

Department of Environmental Quality
Attention: Debra Harris
629 East Main Street
P.O. Box 1105
Richmond, VA 23218

FRANKLIN

GLOUCESTER

RE: 9VAC25-900 Certification of Nonpoint Source Nutrient Credits

HAMPTON

Dear Ms. Harris:

ISLE OF WIGHT

The Hampton Roads Planning District Commission (HRPDC) appreciates the opportunity to provide comments on the draft Nonpoint Source Nutrient Credit regulations. The localities represented by the HRPDC support the concept of expanding nutrient credit trading. We applaud the state for creating a certification process that will allow localities more flexibility to meet stormwater quality objectives.

JAMES CITY

NEWPORT NEWS

NORFOLK

The HRPDC would appreciate the DEQ's consideration of the following comments.

POQUOSON

1. **The definition of "Management area" in the draft regulation is appropriate for the urban sector and should not be revised.** The definition of "management area" is important to establish a fair baseline that must be met before credits can be certified for trading. Requiring all contiguous parcels to the same landowner to meet the baseline is a good balance between the more extreme options of requiring baseline only on the parcel with the nutrient-generating activity and requiring baseline for all of the properties that the landowner or locality owns.

PORTSMOUTH

SMITHFIELD

SOUTHAMPTON

2. **The certification process should include a public hearing, instead of public notification. A public hearing is particularly important to address concerns if proposed credits are based on a new technology.** The statute (10.1-603.15:2) states that "The regulations shall be designed in a manner that promotes certainty for credit market participants to the extent possible." Without a public hearing, objections to new technologies could be pursued by challenging MS4 or Construction General Permit compliance. Resolving concerns about new technologies before the credits are put on the registry provides more certainty for credit mark participants.

SUFFOLK

SURRY

VIRGINIA BEACH

WILLIAMSBURG

3. **The draft regulation should state that entities holding MS4 permits will not be required to make up for nutrient load reductions in the MS4 service area that are met by purchasing credits.** Credits purchased by developers to meet the immediate requirements of the Construction General Permit could be discounted or eliminated by future policy decisions.

YORK

Ms. Debra Harris

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The draft regulation creates an opportunity for nutrient-generating activities to be approved that are not included in the MS4 Chesapeake Bay TMDL Special Condition guidance. These activities are particularly vulnerable to future discounts tied to Chesapeake Bay Program decisions. Localities would like DEQ to ensure that localities will not be required to make up for those discounted or lost nutrient reductions in their future MS4 permits.

4. **The proposed regulations should be more protective of local water quality. Specifically, in Section 9VAC25-900-90C2c impaired waters with no approved local TMDL should limit the exchange of credits to the following hierarchy:**
 - a. **Upstream of where the discharge reaches impaired waters if credits are available;**
 - b. **Within the same 12-digit HUC, if credits are available**
 - c. **Within the same 10-digit HUC.**

The draft regulation allows exchange of credits within the same 8-digit HUC and adjacent 8-digit HUC. The 8-digit HUC scale is too large. Credits could be purchase hundreds of miles from impaired waters which would have no impact on improving local water quality. This proposed language still allows trading even when DEQ has determined that the local water body is impaired but limits trades to a more reasonable scale in order to promote improvements to water quality.

Thank you for your consideration.

Sincerely,

Kenneth Wright
Chair

Attachment

WSK/jc