



Virginia Department of Planning and Budget **Economic Impact Analysis**

9 VAC 25-900 Certification of Nonpoint Source Nutrient Credits
Department of Environmental Quality
August 18, 2017

Summary of the Proposed Amendments to Regulation

Pursuant to Chapter 748 of the 2012 Acts of Assembly (Nutrient Trading Act),¹ the State Water Control Board (Board) proposes to establish in regulation the process for the certification of nonpoint source² nitrogen and phosphorus nutrient credits. Nonpoint source pollution is pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff. The proposed regulation includes application procedures, baseline requirements, credit calculation procedures, release and registration of credits, compliance and reporting requirements for nutrient credit-generating entities, enforcement requirements, application fees, and financial assurance requirements. Nonpoint source nutrient credits must be certified by the Department of Environmental Quality (Department) prior to release, placement on a registry, and exchange.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

If landowners take specified actions that are judged to reduce the amount of phosphorus and/or nitrogen leaving their property below the amount allowed by regulation, then under the nutrient trading program the landowner can be awarded nutrient credits. These specified actions

¹ See <http://leg1.state.va.us/cgi-bin/legp504.exe?121+ful+CHAP0748>

² Nonpoint source pollution is pollution such as sediment, nitrogen, phosphorus, hydrocarbons, heavy metals, and toxics whose sources cannot be pinpointed but rather are washed from the land surface in a diffuse manner by stormwater runoff.

may be from agricultural and urban stormwater best management practices, management of animal feeding operations, land use conversion, and other established or innovative methods of nutrient control or removal. The credits can be sold to a different landowner situated within the same river basin. This allows the purchasing landowner to legally apply the credited amount of phosphorus and/or nitrogen to offset the impacts of stormwater associated with new development or a new point source discharge, or to meet a nutrient reduction requirement of a municipal separate storm sewer system permit. According to the Department, in awarding nutrient credits, the agency is conservative in estimating the amount of reduction in nutrients that occur as a result of the landowner's specified actions. In other words, on average the reduction in nutrients entering the waterbody due to the specified action likely exceeds the amount credited. Thus, there is likely a net reduction in phosphorus and/or nitrogen entering the river basin taking into account both the selling and purchasing landowners' actions.

Nutrient trading creates revenue opportunities and reduces costs associated with protecting the environment. The opportunity for nutrient trading arises because large differences in the cost to reduce a pound of nitrogen or phosphorus exist among various sectors and practices. In a trading market, sources that can reduce nutrients at low cost have an economic incentive to make reductions below target levels and then sell the credits to those facing higher costs. Trading therefore creates new revenue opportunities for farmers, entrepreneurs, and others who can generate nutrient credits. At the same time, trading allows land developers and other entities that face higher nutrient reduction costs to save money by purchasing credits to meet a portion of their nutrient reduction obligations. As a result, trading helps achieve overall nutrient reductions in the Chesapeake Bay watershed and elsewhere in the Commonwealth in a more cost-effective manner.

The framework and content of this regulatory action largely tracks the specifics outlined in the Nutrient Trading Act. Additionally, this program has already been in operation through guidance documents. Placing the program specifics in regulation is beneficial in that it helps improve clarity and helps ensure consistent procedures for the approval of nonpoint source nutrient banks. The nutrient trading program itself is beneficial in that it improves efficiency and reduces the cost of economic development while maintaining environmental standards. Additionally, since in awarding credits for the nutrient banks the Department is conservative in estimating the amount of reduction in nutrients that enter the river basin as a result of the

landowners specified actions, the nutrient trading program in practice likely improves environmental quality.

Though the program has already been in operation through guidance documents, the proposed regulation does introduce some changes. Operating under the guidance documents, nutrient credits have not been awarded for the reestablishment of a wetland, stream, or other aquatic resource in an area where it previously existed (restoration). Nutrient credits would be available for restoration under the proposed regulations. This would likely increase how often such restoration takes place, positively affecting the environment.

Regarding granting credits for tree plantings on land conversion projects, the Department's practice thus far has been to release 100% of credits upon planting with the sponsor providing financial assurance in the event of a crop failure. This procedure has placed the burden on the Department to re-inspect plantings a year or two after release and to require replanting or to potentially cash in the financial assurance mechanism and contract out replanting of the site if the sponsor does not cooperate. The Department has found some sites with significant planting failures which occurred after credits were released and sold. In order to minimize the problems caused in such situations, the proposed regulation puts the onus on the applicant rather than the Department by not releasing 100% of the credits until the planting has proven to be successful. The proposed regulation allows for an initial release of 25% of the credits upon taking the property out of agricultural production and recording of a deed restriction. The remaining 75% of credits would not be released until the success of the planting has been established (i.e., after one complete growing season for evergreens and two complete growing seasons for hardwoods). The proposed phased release eliminates the need for financial assurance on land conversion projects.

Businesses and Entities Affected

The nonpoint source nutrient trading program and the proposed regulation affect owners of land that may earn nutrient credits from agricultural and urban stormwater best management practices, management of animal feeding operations, land use conversion, stream or wetlands restoration, shellfish aquaculture, and other established or innovative methods of nutrient control or removal. Investors seeking to purchase land or to partner with landowners to create credits for

sale are also affected. Land developers are indirectly affected in that they will be likely buyers of these credits.

Localities Particularly Affected

The nonpoint source nutrient certification program under the proposed regulation applies to localities throughout the Commonwealth. These credits can be certified and used statewide to offset new development. There is likely to be particular demand for the use of the credits within the Chesapeake Bay watershed.

Projected Impact on Employment

By reducing the cost of economic development while maintaining environmental standards, the nutrient trading program and the proposed regulation may positively affect employment.

Effects on the Use and Value of Private Property

The nutrient trading program and the proposed regulation may increase the value of land that can be used for nonpoint source nutrient banks.

Small Businesses: Costs and Other Effects

The nutrient trading program and the proposed regulation may reduce development costs for small businesses.

Small Businesses: Alternative Method that Minimizes Adverse Impact

The proposed amendment will not adversely affect small businesses.

Real Estate Development Costs

The nutrient trading program and the proposed regulation may reduce real estate development costs.

Legal Mandate

General: The Department of Planning and Budget has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia (Code) and Executive Order Number 17 (2014). Code § 2.2-4007.04 requires that such economic impact analyses determine the public benefits and costs of the proposed amendments. Further the report should include but not be limited to: (1) the projected number of businesses or other entities to whom the proposed regulatory action would apply, (2) the identity of any localities and types of businesses or other entities particularly affected, (3) the projected number of persons and employment positions to

be affected, (4) the projected costs to affected businesses or entities to implement or comply with the regulation, and (5) the impact on the use and value of private property.

Adverse impacts: Pursuant to Code § 2.2-4007.04(C): In the event this economic impact analysis reveals that the proposed regulation would have an adverse economic impact on businesses or would impose a significant adverse economic impact on a locality, business, or entity particularly affected, the Department of Planning and Budget shall advise the Joint Commission on Administrative Rules, the House Committee on Appropriations, and the Senate Committee on Finance within the 45-day period.

If the proposed regulatory action may have an adverse effect on small businesses, Code § 2.2-4007.04 requires that such economic impact analyses include: (1) an identification and estimate of the number of small businesses subject to the proposed regulation, (2) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the proposed regulation, including the type of professional skills necessary for preparing required reports and other documents, (3) a statement of the probable effect of the proposed regulation on affected small businesses, and (4) a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation. Additionally, pursuant to Code § 2.2-4007.1, if there is a finding that a proposed regulation may have an adverse impact on small business, the Joint Commission on Administrative Rules shall be notified.

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