



MDE Issues Proposed Trading Regulations November 2017

MAMWA continues to participate in the State's Water Quality Trading Advisory Committee, which met most recently on September 18, 2017. The goal is to develop an implementation framework for the September 2015 action by the Maryland Department of Agriculture (MDA) and MDE in issuing the Maryland Nutrient Trading Policy Statement supporting cross-sector water quality trading. On October 11, 2017, MDE released a prepublication draft of proposed regulations that would establish the Maryland Water Quality Trading Program. Here are some highlights of the proposed regulation:

Purpose – The stated purpose is to establish a program between the agricultural, stormwater, wastewater, and onsite sewage disposal sectors that will “expand opportunities for point sources and nonpoint sources” to “achieve results faster and at a lower cost,” while “accelerating efforts to restore and improve water quality.”

Wastewater to Wastewater “Trading” – The previous draft trading regulations defined “trading” as “a transaction, sale, or other exchange through a contractual agreement between credit generators and credit buyers that have been authorized or certified by the appropriate State agency or its designee.” We noted that this definition did not attempt to classify reallocation between or among a single owner's own facilities or facility consolidation as trading, giving MAMWA Members the option to reallocate or consolidate allocations without having to comply with restrictive and inappropriate regulatory requirements (e.g., 5% retirement ratio). MDE has specifically exempted wastewater to wastewater trades from the regulations by including the following language: “This chapter does not apply to wastewater point source to wastewater point source trading.”

Permits & Public Process – The proposed regulations provide that wastewater point source credits are certified through the issuance of an NPDES permit. Although MDE has not clearly stated its intent to require major permit modifications to address this requirement, we anticipate MDE intends to do so to comply with new public participation requirements. MAMWA has long opposed the need to amend POTW permits to sell credits, because they are already documented on certified DMRs. We will continue to address this issue in comments to the Department.

WWTP Baselines Generally – The proposed regulations provide that “The baseline for a wastewater point source shall be determined by the Department based on an annual



loading limit wasteload allocation established in the wastewater point source's NPDES discharge permit." Wastewater plants that meet baseline are allowed to generate credits based on a performance-based benchmark. At the end of each year, a wastewater plant will be allowed to calculate the difference between actual annual effluent nutrient load (annual cumulative flow times the actual effluent nitrogen or phosphorus concentration, converted to units of pounds per year) and the performance-based benchmark (annual cumulative flow times assigned nitrogen or phosphorus concentration, converted to units of pounds per year, where the concentration is either 4.0 mg/l for nitrogen and 0.3 mg/l for phosphorus or equal to or less than the concentration basis for the permit's floating cap). As proposed, wastewater plants will not be allowed to trade any capacity-based credits.

Grant Funding – MDE has added language that prohibits a person from generating credits using grant funding (funding may still be used to meet baseline however). There is an exception to this rule if a wastewater treatment plant has accepted BRF O&M funding to achieve 3.0 mg/l for nitrogen and 0.3 mg/l for phosphorus. The proposed rules would allow trading in such case below the 3.0 and 0.3 concentration levels. This means MAMWA Members who are eligible for O&M funding will need to consider whether it is financially advantageous to forgo that additional funding, and choose instead to either trade credits on the market, participate in MDE's first RFP for credits, or trade credits internally with their MS4.

Reserve Ratios – MDE will impose a 5% reserve ratio to each WWTP-generated credit. This is in place of so-called "retirement" ratio, but has a similar effect of setting aside (for the term of the trade) 5% of the credits traded. In addition, MDE has proposed imposing an Uncertainty Ratio of 2:1 for trades involving nonpoint source credits acquired by a wastewater point source, unless the seller or buyer can convince MDE that the ratio is unnecessary. MDE has also included an Edge of Tide Ratio that will apply if the buyer and seller are in different segmentsheds.