

Maryland's Nutrient Trading Program Set to Launch: Program Regulations Effective July 16

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Friday, July 13, 2018

The Maryland Department of the Environment (MDE) has published final regulations to implement Maryland's Water Quality Nutrient Trading Program. A decade in the making, the program, part of Maryland's Chesapeake Bay restoration efforts, is designed to provide opportunities for regulated dischargers of nutrients to achieve required reductions more cheaply and to incentivize a variety of private and public entities to generate and trade potentially valuable pollution reduction credits. Final regulations establishing the program were published on July 6 and will become effective on July 16.

A broad range of regulated nutrient dischargers are eligible for the program, including stormwater, wastewater, and industrial wastewater dischargers.

Notably, a variety of non-regulated sources—such as farms, septic system users, and potentially anyone who can design and demonstrate the effectiveness of an innovative nutrient reduction technique—can qualify for the trading program. Supporters hope that the program will provide a strong economic incentive for farmers and others to implement best management practices that are not otherwise required, resulting in salable credits and nutrient discharge reductions.

Credits are generated by reducing nutrient loads below certain baselines established by an existing permit or other requirement. Once the reductions are verified and certified by MDE, credits may be registered on an online database and

are then available for trading.

Credit purchasers can include those dischargers seeking to offset required reductions or simply wishing to improve water quality. MDE anticipates that, similar to emission reduction credits familiar to air pollution control regulation, credit aggregators will participate in funding, generating, owning, or assembling credits among a variety of small generators, such as farmers, and that brokers will participate in connecting credit sellers and buyers.

The price for credits will be determined between the credit buyer and seller. It is not clear what the price is likely to be but will depend on where the credits are generated. As an example, the average cost to reduce nitrogen ranges from as little as \$1.50 to \$4 per pound of annual reductions for most agricultural best management practices to more than \$500 per pound of annual reductions for urban stormwater control retrofits. Wastewater treatment retrofits cost between \$15 and \$45 per pound of annual nitrogen reductions.

Perhaps suggestive of the price of credits is the fee MDE established in lieu of required nitrogen and phosphorus reductions. That fee was set by a recently issued Clean Water Act Section 401 water quality certificate. MDE set the fee at \$13 per pound of annual nitrogen reductions and \$260 per pound of annual phosphorus reductions.

It is expected that credits should be inexpensive enough to enable municipalities to purchase credits as a more reasonable economic alternative to costly separate storm sewer retrofits and/or repairs to effect required nutrient reductions. Holders of such permits (known as MS4 permits) include Maryland's 10 largest jurisdictions that have a combined nitrogen reduction requirement of approximately 2 million pounds.

There are a host of other rules governing trading that anyone interested in participating in the program will need to review. These include rules on permit modifications to allow trading, duration of credits, uncertainty, reserve and edge-of-tide ratios; baseline calculations; limitations on trading based on local water quality impairments; prohibitions on use of state and federal grants to pay for reductions; and bad actor limitations.

In addition, because credit users will remain liable to MDE and potentially also to citizen plaintiffs, for discharges if the credit generators fail to deliver the reductions promised, it will be critical for buyers and sellers to have appropriate contract terms to allocate and manage the risk of credit failure.

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