



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

9 VAC 25-900 Certification of Nonpoint Source Nutrient Credits
Department of Environmental Quality
February 20, 2014

Summary of the Proposed Amendments to Regulation

The State Water Control Board (Board) proposes to establish in regulation the process for the certification of nonpoint source nitrogen and phosphorus nutrient credits. The 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 prior to release, placement on the registry and exchange. The agency developed this regulation as required pursuant to Chapter 748 of the 2012 Acts of Assembly.

Result of Analysis

The benefits likely exceed the costs for all proposed changes.

Estimated Economic Impact

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 Chapter 748 of the 2012 Acts of Assembly. 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.

Nonpoint credits established by the Board in accordance with the legislation and this regulatory action may include credits generated 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. These nutrient credits can be sold to businesses or other entities that wish to develop land, new or expanding point source discharges required to offset any increase in nutrient load or permitted Municipal Separate Stormwater Sewer Systems required to reduce nutrients under the Chesapeake Bay Total Maximum Daily Load (TMDL).

Certified nonpoint source nutrient credits are to be placed on a registry of credits. The certified credits that are placed on this registry are to be part of an enforceable market-based trading program that involves the exchange of pollution allocations between sources. Currently, most trades involve exchanges between different point sources; however, the program under this regulation makes available nonpoint source nutrient credits to further trading avenues such as point source to nonpoint source trades or nonpoint to nonpoint trades. These trades contribute to the overall goal of meeting the reductions assigned by the Chesapeake Bay Watershed Implementation Plan and the Chesapeake Bay TMDL.

Businesses and Entities Affected

The nutrient trading program and the proposed regulation potentially 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. Land developers are also 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 (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Code of Virginia and Executive Order Number 14 (2010). Section 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:

- the projected number of businesses or other entities to whom the proposed regulatory action would apply,
- the identity of any localities and types of businesses or other entities particularly affected,
- the projected number of persons and employment positions to be affected,
- the projected costs to affected businesses or entities to implement or comply with the regulation, and
- the impact on the use and value of private property.

Small Businesses: If the proposed regulatory action will have an adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include:

- an identification and estimate of the number of small businesses subject to the proposed regulation,
- 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,
- a statement of the probable effect of the proposed regulation on affected small businesses, and
- a description of any less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation.

Additionally, pursuant to § 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 (JCAR) is notified at the time the proposed regulation is submitted to the *Virginia Register of Regulations* for publication. This analysis shall represent DPB's best estimate for the purposes of public review and comment on the proposed regulation.

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