

Please Note: This document has been prepared for review and discussion by the Nutrient Credit Study Committee in October 2011. It will likely change following committee discussion, public review and other input.

Section 5 – Program Design – Markets and Credits

- DCR certifies offsets statewide that are “beyond baseline” (see baseline definitions proposed in Section 6) as generated from establishment of agricultural or urban BMPs, modification of existing agricultural or urban BMPs, incineration or transportation of animal waste, land use conversion, stream restoration or other activities approved by the Department from nutrient offset generators for use according to the provisions of § [10.1-603.8:1](#). DCR will ensure that efficiencies, where possible, are consistent with the Chesapeake Bay Program model and will establish an interagency review team to review credit proposals. DCR will insure that practices result in a net reduction in nutrients delivered to the Bay over the established baseline year. Certified credits are available to be entered into the Virginia Nutrient Credit Registry (see below)
- DCR will also be given authority to establish a process to determine the efficiency of practices not reflected in the Chesapeake Bay model that includes consultation with state or federal agencies with relevant expertise and with the assistance of an “expert panel”. Such practices could include credits for in-water treatment or nutrient removal or other non land-use BMP practices.
- Initially, DCR will establish by regulation, standards for credits to be certified by DCR as “perpetual”, those involving land use changes with permanent easement or other perpetual instruments.
- As determined by the Department of Health, perpetual credits will be available to meet provisions of 10.1 – 603.8:1, available for new or expanding wastewater facilities, and offsets for new septic systems.
- DCR will be authorized to establish, by regulation, a standards and a process for approval for “annualized” credits, those based on practices that are not permanent changes to the landscape or that are not protected by easements or other perpetual instruments. Policy regarding the use of annual credits needs to be developed.
- For all credits, details such of maintenance agreements, compliance, reporting, tracking, deed restrictions, financial assurance, and legal covenants should be integral to their analysis for acceptance.
- Annualized credits are available for new and expanding waste water facilities or to meet short term needs as determined by permit holders should the use of such credits such as MS4 permit holders pending BMP installation;
- All certified credits must be posted and tracked in a newly established Virginia Nutrient Credit Registry with online query capabilities. Status and fate of registered credits will be available for query.
- Local, state and federal agencies may generate and bank credits for their own use in meeting WLAs that may be assigned pursuant to a TMDL based on regulations developed by DCR.
- CAFOs may use permanent or approved annualized offsets for any annual compliance purposes.

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- Existing Nutrient Credit Exchange, Nutrient Credit Exchanges Association and provisions of the watershed general permit remain intact except for the following changes outlined below.
- Credits by facilities covered by the watershed general permit may be transferred for a period of time determined by the owner to other permittees under common ownership with the agreement of the facility subject to the Chesapeake Bay Watershed General Permit.
- MS4 permittees would be authorized to enter into agreements with other MS4 permittees within the same watershed to collectively meet any established WLAs. Offsets could be undertaken with the geographic restrictions that currently exist for stormwater offsets at such times load allocations are applied to MS4 localities. MS4 permittees authorized to use permanent or annualizes credits based on their needs and for compliance with any permit requirements.

Section 6: Credit Generation

Baselines:

- Land Conversion – DCR is authorized to establish by regulation land use conversion criteria based on land use at the time of baseline establishment. Once established, credits remain valid even if criteria versions or efficiencies change.
- Agricultural Practice Baseline – DCR is authorized to establish by regulation what is needed to meet the agricultural provisions of the WIP and other statewide water quality criteria. See process above for evaluation of non-model practices.
- Urban Practice Baseline – Load reductions must go beyond those established in the Chesapeake Bay TMDL WIP. DCR determines process for “non-model” practices after consultation with interagency team and the existing DCR BMP Clearinghouse.
- Common baseline date

Section 7: Banking

Banking

- Public or private entities may generate credits and qualify as a nutrient credit bank. Such banks may register credits in the Virginia Nutrient Credit Registry.
- Process similar to wetlands bank for approval of facilities that will generate credits including:
- Establish registration fee (to DCR)
 - “Prospectus” (a plan for achieving nutrient reductions beyond applicable baselines) submitted that contains information that could include sponsor information, including financial assurance,

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- Reviewed by interagency team
- Site visit
- Public notice of “prospectus”
- Evaluation Letter
- Finalize proposal
- DCR determines schedule when credits are “released”
- DCR ensures proper maintenance and financial assurances.
- Wetlands banks may apply to convert approved wetland acres (created following baseline date) into nutrient credits using nutrient loading assumptions for land uses as used in the Chesapeake Bay model. Once sold, a credit, whether wetland or nutrient, is retired.
- A percentage of total credits certified nonpoint credits are retired with a percentage of retired credits available for purchase from WQIF by buyers who are unable to secure offsets in a watershed where no credits are available. Retired credits remain on the registry, but are unavailable for sale or use.
- Current 6% fee collected from the sale of credits to be deposited in fund solely for the oversight and administration by DCR of nutrient credit program.
- Online tool established to allow for queries regarding possible generation of credits, then follow process similar to wetlands bank where pre-application is made and vetted by agencies prior to construction.
- All trades covered by binding contract are available for public inspection.

Section 8: Additional Legislative Authorities

- Localities must purchase or generate credits sufficient to offset estimated annual loads from installed septic tanks as determined by the Department of Health. Facilities covered under the Watershed General Permit may use a portion of their waste load allocation for this purpose.