



GUIDANCE DOCUMENT ON UTILIZATION OF NONPOINT NUTRIENT OFFSETS

Summary:

This guidance document specifies DCR policy on the requirements of the Code of Virginia pertaining to application of stormwater nonpoint nutrient offsets. It details how these requirements affect the General Permit for Stormwater Discharges from Construction Activities and locally-adopted regional stormwater management programs approved and operated consistent with the Chesapeake Bay Preservation Act regulations.

Electronic Copy:

An electronic copy of this guidance in PDF format is available on the Regulatory TownHall under the Virginia Soil and Water Conservation Board at <http://townhall.virginia.gov>

Contact Information:

Please contact the Department of Conservation and Recreation's Division of Stormwater Management by calling 804-786-2064 with any questions regarding the application of this guidance.

Disclaimer:

This document is provided as guidance and, as such, sets forth standard operating procedures for the Department of Conservation and Recreation that administers the program on behalf of the Board. This guidance provides a general interpretation of the applicable Code and Regulations but is not meant to be exhaustive in nature. Each situation may differ and may require additional interpretation of the Code of Virginia and attendant regulations.

Nonpoint Nutrient Offsets

I. Background:

In 2011, the Virginia General Assembly passed Senate Bill 1099, amending Va. Code § 10.1-603.8:1. This bill, which became law on July 1, 2011, modified the criteria for using nonpoint nutrient offsets to comply with the Virginia Stormwater Management Program regulations. An official copy of the statute is available at the Division of Legislative Services [<http://lis.virginia.gov/cgi-bin/legp604.exe?000+cod+10.1-603.8C1>].

II. Authority:

Section 10.1-603.8:1 establishes that a permit issuing authority includes "any locality that has adopted a local stormwater management program." Section 10.1-603.8:1.D of this statute further provides that a permit issuing authority shall allow off-site options subject to the following conditions:

“1. The permit applicant demonstrates that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with post development nonpoint nutrient runoff compliance requirements cannot practicably be met on site. If an applicant demonstrates on-site control of at least 75 percent of the required phosphorous nutrient reductions, the applicant shall be deemed to have met the requirements of clauses (i) through (iv) above.

2. Less than five acres of land will be disturbed; or

3. The post construction phosphorous control requirement is less than 10 pounds per year.”

Section 10.1-603.8:1(I) of the Code further provides, “The permit issuing authority shall require nonpoint nutrient offsets and other off-site options approved by the Department or applicable state board, including locality pro rata share programs established pursuant to § 15.2-2243, achieve the necessary nutrient reductions prior to the commencement of the permittee's land-disturbing activity. Pro rata share programs established by a locality pursuant to § 15.2-2243 and approved by the Department or applicable state board prior to January 1, 2011, including those that may achieve nutrient reductions after the commencement of the land-disturbing activity, may continue to operate in the approved manner for a transition period ending June 30, 2014. The permittee shall have the right to select between the use of nonpoint nutrient offsets or other off-site options, except during the transition period in those localities to which the transition period applies.”

III. Discussion and Interpretation:

General Permit for Stormwater Discharges from Construction Activities

In order to utilize nutrient offsets for compliance with the post-development stormwater design criteria required by the General Permit for Stormwater Discharges from Construction Activities, the required reductions must meet the conditions established in § 10.1-603.8:1 enumerated above.

For projects where nutrient offsets apply, the operator should indicate on the General Permit Registration Statement that nutrient offsets are intended to be acquired in accordance with § 10.1-603.8:1 of the Code of Virginia. Where the permit applicant intends to use nonpoint nutrient offsets for meeting water quality requirements, the permit issuing authority must ensure that the offsets have already been constructed and are available prior to the permittee's initiation of the land disturbing activity. The applicant must reserve, purchase or contract for sufficient credits from an approved nutrient bank prior to beginning land disturbance. Final compliance with post-development design criteria must be achieved by the time of permit termination. The exception to this requirement is during the transition period until July 1, 2014 for local programs which have developed a pollutant loading pro rata share program described in § 10.1-603.8:1(I).

In addition, the stormwater pollution prevention plan shall include information related to nutrient offsets. Specifically, the stormwater pollution prevention plan shall include the following information:

- (a) Name of the broker from which offsets will be acquired;
- (b) Geographic location (county or city and Hydrologic Unit Code) of the broker's offset generating facility;

- (c) Number of nutrient offsets to be acquired (lbs. per acre per year); and
- (d) Nutrient reductions to be achieved on site (lbs. per acre per year).

Regional Pollutant Loading or Nutrient-Based Pro Rata Share Stormwater Programs Adopted Pursuant to the Chesapeake Bay Preservation Act (CBPA)

The Chesapeake Bay Preservation Area Designation & Management Regulations (the Regulations), 9 VAC 10-20-10 *et seq.*, require local governments to require that any use, development or redevelopment of land in Chesapeake Bay Preservation Areas meets eleven land use performance criteria through their land use ordinances and other enforcement mechanisms. 9 VAC 10-20-120. Performance criterion 8 states that a locality must establish stormwater management criteria consistent with the water quality protection provisions of the Virginia Stormwater Management Regulations (4 VAC 50-60). The Regulations further state that one of the options for compliance with the stormwater management criterion is a locally adopted regional stormwater management program that is reviewed by the Chesapeake Bay Local Assistance Board (CBLAB) and found to achieve an equivalent level of water quality protection to that required by the Stormwater Management Regulations. 9 VAC 10-20-120(8)(a)(2).

According to this provision, a CBPA locality can develop its own regional, pro rata share program, have it reviewed and approved by CBLAB, and be deemed to comply with the stormwater management requirements of the Regulations. Further, if a locality already has an operating pollutant loading or nutrient based pro rata share program that has been reviewed and approved by CBLAB, then pursuant to § 10.1-603.8:1(I), it may continue to operate that program as it was approved by CBLAB until July 1, 2014. The local ordinance establishing such program may provide for exceptions to the pro rata program, and that process can be used to allow for the use of offsets rather than participation in the pro rata share program.

Additional Information Regarding Administration of Nonpoint Nutrient Offsets under Sec. 10.1-603.8:1

Project Operators

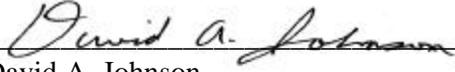
Section 10.1-603.8:1 requires that the Department require that nonpoint nutrient offsets and other off-site options achieve the necessary nutrient reductions prior to the commencement of the permittee's (operator's) land disturbing activity. As such, project operators intending to utilize nonpoint source nutrient credits must submit a complete DCR form DCR199-205 (07/11) to the Department prior to land disturbance.

Nonpoint Nutrient Offset Brokers

The statute provides that the broker shall pay the permit issuing authority a water quality enhancement fee equal to 6% of the amount paid by the permittee (buyer) for the nonpoint nutrient offsets. Section 10.1-603.8:1.E. Until the Virginia Soil and Water Conservation Board authorizes local governments to approve development plans under the Virginia Stormwater Management Regulations, the water quality enhancement fee is to be paid to the Department. Upon receipt of a completed DCR form DCR199-205 (07/11) from the project operator, the Department will issue an invoice for payment of this fee.

IV. Adoption, Amendments, and Repeal:

This document will remain in effect until rescinded or superseded.



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November 10, 2011
Date