

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.

## **Proposed Expansion Framework:**

### **Definition:**

**Nutrient Credit:** Amount of nutrient reductions (nutrient defined as nitrogen and phosphorus) beyond established baselines as expressed in pounds of nitrogen or phosphorus. For wastewater treatment facilities, pounds of nutrients between actual and permitted loads.

**Nutrient Offset:** Amount of nutrient credit required by law or regulation to offset an increased nutrient load from a regulated activity.

### **Credit Certification:**

1. DCR is given the authority to certify non-point source credits that include activities that are beyond “baseline” requirements. DCR will establish, by regulation, a process for evaluating and potentially certifying nonpoint source credits for agricultural or urban BMPs, incineration, management of manure, land use conversion, stream or wetlands restoration if such practices are beyond the extent identified in the Virginia Chesapeake Bay TMDL Watershed Implementation Plan (WIP). Such a process will include defined timelines for review, consultation with relevant agencies, and any other necessary due diligence.
2. Reduction values assigned to the various categories in 1 above, should be consistent with those values in the Chesapeake Bay Watershed Model version in force at the time of certification. Should practices not be contained in the Chesapeake Bay model, the agency will use best available values from scientific literature, monitoring or modeling information.
3. Credit values are “grandfathered” in the event evaluation processes or model versions change in the future.
4. DCR will, by regulation, establish a process for evaluation and possible certifications of practices that are not part of the categories of 1 above. Such a process will include defining needed supporting documentation, review timelines, and consultation with relevant agencies and experts.
5. DEQ will certify credits that may be generated from processes closely associated with wastewater treatment.
6. DCR, as part of the certification process, should label credits as “perpetual”, those credits that are derived from a permanent change to the landscape that is permanently protected by an easement of other instrument that carries with the land or as “annualized” that are derived from activities that are not permanent changes to the landscape.
7. DCR may employed a phased approach, concentrating first on certification of perpetual credits and those practices that appear in the Chesapeake Bay Watershed Model.
8. Only certified credits may be entered in the newly established Virginia Nutrient Credit Registry, an online registry capable of tracking credits from “cradle to grave”. Annual reports shall be prepared based on the activities of the registry in any year. Information regarding trades, use of credits for offsets or other information contained in the registry is public.

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9. A registration fee may be established by DCR that is reasonably related to the cost of overseeing and administering registration and credit generation activities.
10. All trades, offsets, registered credits are subject to ongoing auditing and oversight by DCR (stormwater or MS4 permits requirements) or DEQ (VPDES permits for wastewater or CAFO)

### **Credit Market “Participants” and Permissible Credit Uses:**

1. Existing Wastewater: No changes for existing Nutrient Credit Program for wastewater treatment facilities subject to the Chesapeake Bay Watershed General Permit. Such facilities may use credits generated according to existing Virginia Code and General Permit Conditions for compliance.
2. Current requirements for new and expanding wastewater facilities remain.
3. MS4 permittees: If nutrient Waste Load allocations are assigned to MS4 permits, permittees may purchase perpetual credits to comply with assigned waste load allocations or annualized credits if retrofits are in the process of being installed to meet nutrient waste load allocations.
4. CAFOs with waste load allocations may purchase annualized or perpetual credits within the same river basin so long as baseline practices are in place.
5. Loads for newly installed septic systems shall be aggregated by VDH based on numbers of permitted traditional systems installed. Localities may establish a surcharge on septic permits and purchase annualized or perpetual credits from credit generators or, if available, from the Water Quality Improvement fund with the same river basin.
6. Existing protections for local water quality remain in place. Local water quality requirements (TMDLs, special waters) must be met prior to outside credit purchase. Purchase of nutrient credits do not eliminate other TMDL waste load allocation requirements for water quality problems caused by other stressors such as flow, PCBs, or sediment.

### **“Bubbling” of Nutrient Loads and Transfer of Allocations beyond current allowed under Watershed General Permit.**

1. Facilities subject to the Watershed General Permit may transfer a portion of their allocation to an MS4 permittee within the same jurisdiction or river basin.
2. MS4 permittees may enter into agreement with other MS4 permittees within the same river basin to collectively meet the sum of any waste load allocations established by their permits. (This ability to “bubble” MS4 allocations will require further definition given that stormwater permit requirements from a TMDL are currently based on BMP implementation as opposed to “end-of-pipe” measurable concentrations and loads.
3. Should enforceable waste load allocations be assigned to local governments at the jurisdictional scale at some point in the future, localities may present plans for compliance that “bubble” loads from stormwater, agriculture, wastewater and septic source sectors.

### **Baselines for Ability to Generate Credits**

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1. Urban:
  - a. New development must meet post construction nutrient loading requirements contained in the General Permit for Construction Activities
  - b. Redevelopment must meet a 20% phosphorus load reduction as specified in revised stormwater management regulations.
  - c. MS4s must meet permit requirements such as TMDL derived waste load allocations or performance criteria contained in the Virginia Chesapeake Bay TMDL WIP for MS4 lands.
2. Agriculture: Practices implemented beyond those necessary to achieve a level of reductions assigned in the agriculture sector in Virginia's Watershed Implementation Plan as practiced on the "whole farm".
3. Land Use Management and Conversion: Efficiencies based on those contained in the Chesapeake Bay model with the prior-conversion land use presumed to meet baseline requirements for that land use as specified in the WIP.

### **Banking**

1. New or existing public or private entities may propose credit generating activities and register as nutrient banks. Public agencies, regional or local public service authorities, political subdivisions of the states, public utilities may be certified in a process that may be different from new firms. Financial assurance and other appropriate standards will be applied to all firms.
2. Firms may establish perpetual credits or aggregate annualized credits from land owners or operators. Annualized credits may be "packaged" and sold for defined period of times but not in perpetuity.
3. The process for proposing credits will be similar to the current process for proposing wetland or stream credits and should include:
  - a. "Prospectus" (a plan for achieving nutrient reductions beyond applicable baselines) submitted that contains information that could include sponsor information, including financial assurance,
  - b. Reviewed by interagency team
  - c. Site visit
  - d. Public notice of "prospectus"
  - e. Evaluation Letter
  - f. Finalize proposal
  - g. DCR determines schedule when credits are "released" (available on the Virginia Credit Registry)
  - h. Proper maintenance and financial assurances are assured.
4. Governmental agencies may generate and bank credits for their own use. Such agencies are subject to any established baselines and may enter into agreements with private firms to provide for credit needs.
5. Stream or wetlands banks established after the baseline date (July 1, 2005), may apply to convert approved wetland or stream acres into nutrient credits. Once sold, a nutrient credit is retired and may not be sold as a wetland or stream credit.

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6. Permit holders are responsible for ensuring credits remain in place to meet permit requirements. Permit holders would be expected to have contractual relationships with credit providers. Authority for inspection provided to appropriate state agency.

### **Insurance and Credit Retirement**

1. A percentage of credits certified to be entered into the Virginia Credit Registry will be assigned to the Water Quality Improvement fund with a portion of those credits available should no credits be available to meet compliance requirements or replace failed practices.

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