



Executive Order 52 Nutrient Offsets Report Issued March 2017

The Administration has completed its study on “Development of Long-Term Offsetting Methods within the Virginia Nutrient Credit Exchange Program” as ordered by the Governor via Executive Order 52. On December 1, 2016, the cabinet secretaries submitted their E.O. 52 Workgroup final report, which contained various recommendations, summarized below. Here is a summary of the recommendations from the report:

- Remove preference in the Code of Virginia (§ 10.1-2128.2.B) for the use of the Nutrient Credit Fund for facilities that generate electricity from animal waste. *Rationale:* To rank one possible source of credits above others without knowing the cost per pound of reduction is not a responsible use of taxpayer money.
- Amend definition in the WQIA (§ 10.1-2117) of “Nutrient Removal Technology” to include water reuse technologies that result in a reduction of nutrient discharges. *Rationale:* Water reuse holds great promise in lowering the discharge of nutrients into the Bay watershed. This change would clarify that WQIF grants could be used for such reuse projects.
- Establish a periodic review of nutrient WLAs (10 years) to determine if amendments to nutrient allocations are warranted. Following such evaluation, use the process of modifying the WQMP regulation to account for such changes through the expedited process established in the Code. *Rationale:* Facilities that have changed their use or implemented changes in their facility that make discharges impossible should not hold nutrient allocations that could be better used by new or expanding facilities or held by the state for future reallocation. This recommendation will be implemented via HB 1619.
- Allow for the use of the existing Nutrient Offset Fund for the acquisition of nutrient credits from point or nonpoint sources for valued economic development projects. Such projects should meet minimum economic impact requirements as well as the current requirement to install and operate high levels of nutrient removal technology at such facilities and all relevant sections of the State Water Control Law. *Rationale:* With the nutrient caps established by the TMDL and the requirements of Virginia law, the ability to offset the entirety of the nutrient load from a new or expanded facility will be a critical element for continuing to attract industries and maintain the ability to maintain mandated nutrient caps over time. The ability of the state to offer credits as part of an overall package of economic development incentives will allow Virginia to maintain the cap on nutrient



discharges in the Chesapeake Bay watershed while attracting new businesses. This recommendation will be implemented via HB 2311.

- Modify the operating procedures of the Nutrient Credit Exchange Association to allow new dischargers to contract for credits under the existing framework of the Exchange and then become eligible under current law to become members of the Exchange following registration for the General Permit and the issuance of an individual permit. *Rationale:* With this change in operating procedure, the Exchange Association could service the offset needs of new dischargers to access available credits at prices determined in accordance with the Exchange's normal procedures. The Exchange could then provide available credits for offset purposes pursuant to contracts with credit purchasers that are not yet members of the Nutrient Exchange, pending DEQ action on their permit applications.
- Increase the Exchange's "forward trading horizon" to a 10 year rolling basis. *Rationale:* A 10-year rolling basis will add additional understanding of the availability of credits and allow for better planning and implementation of necessary credit producing projects as described in the rationale of recommendation 1.
- Modify and upgrade the existing forecasting model used by the Exchange to forecast flows, concentrations and available credits on a 20 year basis. WQIF grant funds could be made available for this purpose. *Rationale:* While recognizing the inherent uncertainty of 20 year projections, further refinement of this capability would allow for more informed planning by existing and potential new or expanding dischargers.
- Continue examination of the issues addressed in the Executive Order study by the Secretaries of Natural Resources, Agriculture and Forestry, Commerce and Trade and relevant stakeholders. *Rationale:* Additional issues will benefit from continued examination. There are a number of unresolved initiatives including the pending credit certification regulations under development by DEQ, regional examination of environmental financing strategies by the Chesapeake Bay Program partners, continued development and examination of the reduction efficiencies of existing and new nonpoint source practices by the Chesapeake Bay program and other actions that will influence credit markets and nutrient credit policy in Virginia.

VAMWA will continue to track and help shape the next steps in this process.