



## Pollution Trading in Maryland: Three Fundamental Flaws in MDE's Regulations

On December 8, 2017, the Maryland Department of the Environment published its long-awaited nutrient trading regulations, capping more than two years of effort to develop the framework for a new economic market intended to reduce the amount of nutrient and sediment pollution in the Chesapeake Bay and local waterways. Pollution trading has worked in some contexts, such as between power plants with smokestacks whose emissions can be monitored and controlled. But now Maryland is proposing to start trading with pollution sources such as farm fields and parking lots, whose runoff is diffuse and difficult to measure. This could undermine accountability for polluters and the enforceability of the Clean Water Act, which would harm Chesapeake Bay cleanup efforts. MDE's proposed nutrient trading program contains three fundamental flaws.

**Flaw #1: MDE's regulations lack geographic restrictions that would protect local communities and streams from "hot spots" of concentrated pollution. In fact, it incentivizes the creation of such hot spots.**

Local pollution hot spots are an inevitable consequence of pollution trading programs but can be mitigated with the right rules. Unfortunately, Maryland's new regulations do not contain sufficiently protective rules for local waters. Instead, the regulations divide the state into just three excessively large trading zones, which treat water pollution challenges in Baltimore City the same as those in Worcester County and the challenges in Prince George's County the same as those in Garrett County. These oversized and artificial trading boundaries also discourage economic investment in stormwater management and other urban pollution reduction projects while encouraging local taxpayer dollars to be sent many miles away where they will do nothing to reduce nutrient, sediment, or the many forms of dangerous and toxic water pollutants found in urban watersheds and communities.



**Recommendations:** MDE should require all transactions to be between buyers and sellers in the same local watershed and require all sellers to be upstream of buyers. MDE should also require buyers to demonstrate that their accumulated credits will not violate local water quality standards.



### **Flaw #2: The rules allow for “paper credits” not backed by real pollution reductions.**

Through the Bay Restoration Fund, Maryland taxpayers have funded upgrades to dozens of wastewater treatment plants across the state. These upgrades have successfully reduced pollution in the Bay by millions of pounds annually and are the primary reason for overall improvements in the Bay’s water quality. But MDE’s proposed regulations will allow these past pollution reductions to be counted as future progress in some cases by granting new credits for sewage plants to trade without doing any new work to reduce pollution.

**Recommendations:** MDE should require nutrient credit producers to submit an application to MDE describing what new and additional capital investments or operational improvements they will make to reduce pollution. Any credits awarded should be based only on the actual difference between past and future levels of pollution. In no circumstances should credits be allowed for a pollution level above the statutory threshold established by the General Assembly for enhanced nutrient removal technology at the state’s sewage treatment plants.

### **Flaw #3: MDE’s regulations do not account for uncertainty about the effectiveness of evolving pollution-control practices.**

Low-cost pollution reduction projects – such as cover crops, stream buffers, and manure management programs – are supposed to be the primary source of credits in a nutrient trading market. But the actual pollution reductions delivered by these projects vary widely. For unmonitored “nonpoint” sources like agricultural land, research shows that pollution reductions in controlled settings are often significantly higher than results measured in the real world. This is why most trading programs – and EPA guidance – require a credit buyer to purchase credits for twice as much pollution as they need to reduce if the credits are from a nonpoint source. This two-to-one “trading ratio” is incorporated in most trading program rules to ensure that the uncertainty associated with BMPs are fully accounted for.

**Recommendation:** MDE should adopt a 2:1 trading ratio for all nonpoint credit transactions to ensure the program truly accounts for pollution reduction uncertainty associated with BMPs.

Accounting gimmicks will not save the Bay. The proposed trading regulations must be revised to ensure that any new trading market produces legitimate, additional, and verifiable pollution reductions and that it does not jeopardize our efforts to restore the Bay, promote investment in local restoration economies, and protect the health of local waters and communities.

For more information:

*Trading Away Clean Water Progress in Maryland* from the Center for Progressive Reform and the Environmental Integrity Project (Dec. 2017), <http://bit.ly/MDPollutionTradingRpt>

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