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VIA E-MAIL gary.setzer@maryland.gov

Gary Setzer
Senior Advisor
Maryland Department of the Environment
1800 Washington Boulevard
Baltimore, Maryland 21230

Re: Comments on draft Nutrient Trading Regulations
44 Md. Reg. 1189-95

Dear Mr. Setzer:

The Maryland Industrial Technology Alliance (“MITA”) submits these comments on the draft nutrient trading regulations published in the Maryland Register on December 8, 2017. MITA represents a vital component of Maryland’s economy as producers of a wide variety of products and transportation services and provides high-paying jobs to thousands of workers throughout Maryland. Our members’ products are used in medicines, foods, fertilizers, water treatment, and in the production of automobiles, airplanes, energy and more. MITA members have an interest in both generating and potentially purchasing nutrient credits.

MITA submits the following comments on the draft nutrient trading regulations:

1. MITA Generally Supports the Trading Regulations. MITA supports the development of a nutrient trading program as a useful tool to help improve the overall quality of Maryland’s waters and the Chesapeake Bay. We appreciate the inclusion of industrial and non-regulated sources as possible credit generators and/or purchasers into the current draft. MITA believes that any trading program should provide the maximum flexibility for the generation and trading of credits to address nutrient loading in the Chesapeake Bay, and minimize obstacles to nutrient trading. Although the draft regulations are a good start in developing a workable trading program, providing additional flexibility to encourage nutrient trading would improve the regulations further. The following comments provide examples of ways in which the Department should improve the regulations to add additional flexibility.

2. MDE Should Retain the Option to Allow Trading Outside of the Defined Trading Regions. In the previous draft regulations released to the Water Quality Trading Advisory Committee on October 11, 2017, MDE retained the ability to allow pilot projects in which credits generated in another state are accepted by the Maryland Water Quality Trading Program. Draft

Regulation 26.08.11.02.B (Oct. 11, 2017). The current version removes subsection B entirely and deletes the previous reference to this option from draft Regulation .04.C. We believe this is a mistake and will unnecessarily hamstring MDE instead of providing flexibility to allow additional credit generation and trading, when appropriate.

Although MITA agrees with the concept of steering credits toward local sources that have water quality issues as a preference or goal, geographic proximity is not always the best measure of the benefits of a credit-generating project. For example, a credit generated from unused discharge capacity within a local watershed (which does not provide tangible environmental improvement) should not necessarily take priority over a large-scale stream restoration project that is further away but is providing multiple water quality benefits. The most impactful way to improve water quality in the Susquehanna River within Maryland may be to allow trading with upstream credit generators in Pennsylvania and New York. Artificially limiting trades by too narrow geographic boundaries will discourage parties from seeking the most cost-effective and environmentally beneficial projects and exalt form over substance. Accordingly, MDE should restore the deleted sections or add similar language that provides MDE with the ability to accept credits outside the defined trading regions in appropriate circumstances.

3. Excessive Trading Ratios Will Artificially Hamper Credit Trading. The draft regulations include ratios to be applied to every trade, including an uncertainty ratio, an “Edge of Tide” ratio, and a reserve ratio, purportedly to reduce risk and uncertainty by adjusting the available credits between a willing seller and a willing buyer. We agree with the Department’s proposed application of the uncertainty ratio to provide additional assurance that the claimed pollution reduction is occurring in cases where the science is not certain and where a lower ratio cannot be justified. We also agree with the Edge of Tide adjustment factor to account for a pollutant’s travel over land or in water where the credit seller and credit buyer are located in different segmentsheds. However, a reserve ratio of 5% piled on top of the uncertainty and Edge of Tide ratios is neither necessary nor desirable. The reserve ratio will force credit generators and purchasers to generate credits to give to the State to be held for future use, unrelated to the impacts of the generator’s or the purchaser’s activities. This is an unfair imposition of costs that has no relationship to the regulated activities for which the credit was generated and will artificially suppress the marketability of credits. We suggest deleting the reserve ratio concept or reducing it to a lower percentage, such as 1%.

4. The 3 Year Verification Requirement Is Unnecessary. The draft regulations require that credits be verified at least once every three years. This verification requirement will put an unnecessary burden on credit trading. The regulations should provide an opportunity to generate perpetual credits, similar to Virginia’s trading program.

Thank you again for the opportunity to participate in the development of the nutrient trading program in Maryland. MITA hopes the Department will do all it can to ensure that Maryland's nutrient trading program is as robust as possible and maximizes participation opportunities.

Very truly yours,



Margaret M. Witherup