

**One Page Summary of Primary Comments on Proposed Ch. 96 –Trading Program
Milton Regional Sewer Authority (MRSA), George Myers, Superintendent**

The Regulations Should Set Forth Objective Criteria: Although DEP put out its trading policy in 2006, answers to specific questions regarding implementation have been in a constant state of flux – often depending upon whom at DEP you talk to and what day the discussion occurs. The proposal neither provides clear and certain standards for nutrient trading nor ensures that credits and offsets will be calculated correctly. Questions which remain unanswered include, among other things: the specific reserve factor, if any, that would apply to point source trades and how trades will be calculated based upon the deliverable loads to the seller and the purchaser. MRSA strongly encourages the establishment of objective criteria for point source to point source (“PS-PS”) trades rather than leaving every decision by DEP subject to disagreement based upon the potential arbitrary decision-making process.

A Meaningful Appeal Process is Necessary: Due to the subjective nature of the trading criteria, it is imperative that the regulations provide a meaningful process for appeal. As appeals before the EHB are often time-consuming, if the appellant were to obtain a favorable decision, it would likely be after the time period the rule otherwise allows for a trade (*i.e.*, water year plus sixty days). There must be a mechanism in place which ensures the proposed subject credits in question would be made available (upon a successful resolution of the appeal). Failure to provide such a reasonable approach would potentially impose financial, legal and compliant damages to POTWs and other injured parties, causing them to seek any and all legal remedies available. The regulations should assure that the buyers and sellers are not being penalized by an inappropriate decision by DEP.

Trading Should be Based Upon Deliverable Loads Using Delivery Ratios of Both the Buyer and Seller: The proposal recognizes the fact that a pound of nitrogen in the upper reaches of the Susquehanna has less impact than a pound of nitrogen entering the water near the border with Maryland. With the attenuation of nutrients occurring, a discharge of 100 lbs of nitrogen at one location will have a different deliverable load to the Chesapeake Bay than 100 lbs of nitrogen discharged at a distant location. Inasmuch as the cap load for Pennsylvania is based upon deliverable loads to the Chesapeake Bay, the overriding issue in any trade should be based upon the deliverable load reaching the Chesapeake Bay. When a PS-PS sale occurs the pounds of the seller should be converted into a deliverable load based upon the delivery ratio and then reconverted into the end-of-pipe limits of the buyer based upon the buyer’s delivery ratio.

Definition of “Credit Reserve”: “Credit reserve” would be defined as credits set aside “to address pollutant reduction failures and uncertainty, and to provide liquidity in the market.” The regulation should be clarified that pollution reduction failures and uncertainty generally associated with non-point source (“NPS”) projects will not be used as a basis for imposing a credit reserve on PS-PS trades. Inasmuch as point source generation of credits will be based upon information set forth in certified DMRs, there should be no credit reserve associated with pollutant reduction failures and uncertainty. It would be inappropriate to penalize PS-PS trades due to the shortfalls anticipated with NPS projects. Furthermore, the language “and to provide liquidity in the market” should be deleted from the regulation. It is unclear what this means.

Disqualification from the Trading Program Should Not be Based Upon Compliance Status: Noncompliance with the various items listed in §96.8(d)(4) is already subject to potential sanctions under applicable law. It should have no affect on the ability to trade. Contracts to trade should not be contingent upon the fortuitous compliance record of each facility under all environmental programs. If any noncompliance (*e.g.*, a single pH violation) could disqualify a facility, no one would buy or sell credits if its ability to participate in the trading program was so elusive.