

House Bill 2168—Nonpoint nutrient offsets

2009 General Assembly

HB2168

- Adds a new section (§10.1-603.8:1) to the Stormwater Management Law (§10.1-603.1 et seq.)
- Allows for an additional means of compliance with water quality technical criteria established pursuant to §10.1-603.4 through “nonpoint nutrient offsets”.

What is a “nonpoint nutrient offset”?

- Subsection A: “...nutrient reductions certified as nonpoint nutrient offsets under the Chesapeake Bay Watershed Nutrient Exchange Program...”
- Subsection G (ii): must be secured in perpetuity.

When can offsets not be used?

- Subsection C:
 - To address water quantity requirements.
 - In contravention of local water quality-based limitations:
 - Consistent with determinations made pursuant to §62.1-44.19:7(B).
 - Contained in an approved MS4 Program Plan.
 - As otherwise may be established or approved by the Soil and Water Conservation Board.

When can offsets be used?

- Subsection B: “Permit issuing authority” may allow compliance with water quality criteria, in whole or in part, through the acquisition of nonpoint nutrient offsets in the same tributary.
 - “Permit issuing authority” and “tributary” defined in subsection A.

When can offsets be used?

- Subsection F: any offsets used must be generated in the same or adjacent 8 digit HUC.
 - But, can use offsets outside this area (but within the same tributary) if no offsets are available at the time of final site design approval.

When can offsets be used?

- Subsection D: only when it has been demonstrated to the satisfaction of the permit issuing authority that:
 - Alternative site designs have been considered that may accommodate on-site BMPs,
 - On-site BMPs have been considered in alternative site designs to the maximum extent practicable,
 - Appropriate on-site BMPs will be implemented, and
 - Full compliance with water quality requirements cannot practicably be met on site.

What must the broker do?

- Subsection E: provide a certification documenting the number of phosphorus offsets acquired and the associated ratio of nitrogen offsets.
- Subsection E: pay the permit issuing authority a fee equal to six percent of the amount paid by the permittee.
 - If paid to DCR, the fee goes into the Va. Stormwater Management Fund.
 - If paid to a locality, must be used in the locality for the purposes enumerated in E.

What must the permit-issuing authority do?

- Subsection G: use a 1:1 ratio of offsets to the site's water quality compliance req'mt.
- Subsection G: assure that offsets are secured in perpetuity.
- Subsection H: cannot grant a waiver unless off-site options have been considered and found not available.

What must the permit-issuing authority do?

- Subsection I: in considering off-site options, give priority to the use of offsets unless a local fee-in-lieu-of, pro-rata share, or similar program has been approved as “substantially equivalent” in nutrient reduction benefits.
 - Prior to approval by the Board, rebuttable presumption that these programs are substantially equivalent.
 - Board to establish criteria for making this determination during local program approval process.

Additional authority

- Subsection J: Board has authority to establish a program for non-Bay portion of the state.
- Enactment clause 2: while not required, Board has authority to conform its regulations to this bill through an exempt action, and adopt regulations through a non-exempt action.