

Offset Subcommittee

Issue Paper B - Presumptive MEP

Background

The previous regulatory language referring to the state “buy-down” provision indicated has a provision defining that trades can occur once an on-site compliance threshold of 0.45 has been satisfied. Specifically, the language was as follows (suspended 4VAC50-60-69 *Offsite Compliance Options*, subsection B.3):

3. Utilization of a payment to achieve compliance with the water quality technical criteria shall be subject to the following limitations:

a. A new development project disturbing greater than or equal to one acre in the Chesapeake Bay watershed must reduce its phosphorus discharge to a level of 0.45 pounds per acre per year of phosphorus on site, or less, and then may achieve all or a portion of the remaining required phosphorus reductions through a payment.

The current law (modified by HB2168(2009)), is embodied in § [10.1-603.8:1](#). *Stormwater nonpoint nutrient offsets*. It states that:

“D. A permit issuing authority may only allow the use of nonpoint nutrient offsets when the permit applicant demonstrates to the satisfaction of the permit issuing authority that (i) alternative site designs have been considered that may accommodate on-site best management practices, (ii) on-site best management practices have been considered in alternative site designs to the maximum extent practicable, (iii) appropriate on-site best management practices will be implemented, and (iv) full compliance with postdevelopment nonpoint nutrient runoff compliance requirements cannot practicably be met on site. “

Issue

The current requirement which mandates the use of on-site treatment to the maximum extent practicable is difficult to administer, and also dis-incentivizes the use of potential off-site compliance options. The suspended regulations proposed to address this by defining a numeric threshold in lieu of a subjective MEP provision. Committee members have suggested that a “presumptive” MEP will ease administration and reduce confusion.

Evaluation

Several potential scenarios have been proposed for this “presumptive” MEP. Those can be listed as follows:

1. **75% of load reduction** – Once an applicant has achieved 75% of the load reduction required, the remainder would be tradable.
2. **50% on-site treatment efficiency** – Once an applicant has achieved a minimum 50% treatment efficiency on-site, then off-site compliance options would be allowed.
3. **Numeric Load threshold** – Once a predefined numeric load threshold (0.45 lb/ac/yr, 0.60 lb/ac/yr, etc.) has been satisfied, the remainder of the load reduction requirement would be tradable.

See the attached chart for an analysis of the estimated benefits for sites of varying densities. (Assumes a target load of 0.41). The committee reviewed the various methods proposed and felt that achieving 75% of the required reduction on-site was the preferred option. Committee members should feel free to review the spreadsheet and check the results which are compiled for illustration only and were modified “on the fly” during the subcommittee meeting.

Potential Regulatory Language Modifications

3. Unless otherwise provided for in a local water quality program approved by the Board, utilization of nonpoint nutrient offsets to achieve compliance with the water quality technical criteria shall be subject to the following limitations:

a. A new development project disturbing greater than or equal to five acres or with a required nutrient load reduction greater than 8 lbs of phosphorus per year, must achieve 75% of its required phosphorus reductions on site, or more, and then may achieve all or a portion of the remaining required phosphorus reductions through nonpoint nutrient offsets. If an applicant can demonstrate (through an analysis of alternate site designs and BMP technologies) to the permit-issuing authority that the 75% of the required reduction cannot be practicably be achieved on-site, then the remainder of the load reduction requirement may be achieved through nonpoint nutrient offsets

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Discussion

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