



CHESAPEAKE BAY FOUNDATION
Saving a National Treasure

November 22, 2016

Jay Braund
Bureau of Point and Non-Point Source Management
Department of Environmental Protection
P.O. Box 8774
Harrisburg, PA 17105-774

RE: Nutrient Credit Trading Program; Comments on Credit Certification Request from EnergyWorks, Gettysburg [46 Pa.B. 6935]

Dear Mr. Braund:

The Chesapeake Bay Foundation (CBF) and its more than 200,000 members thank the Department of Environmental Protection (Department) for the opportunity to provide comments on the Nutrient Credit Trading Program Recertification Request from EnergyWorks.

CBF is the largest non-profit organization dedicated to the protection and restoration of the Chesapeake Bay, its tributaries, and its resources. With the support of our members, our staff of scientists, attorneys, educators, and policy experts works to ensure that policy, regulation, and legislation are protective of the quality of the Chesapeake Bay and its watershed, the largest tributary of which is the Susquehanna River.

CBF supports nutrient trading programs that are properly designed and implemented, since they offer a way to achieve and maintain pollution reductions in a cost-effective and environmentally-beneficial manner. The key to any nutrient trading program is to ensure net environmental benefits and public accountability. In fact, the U.S. Environmental Protection Agency's (EPA) guidance to permit writers regarding trading programs states that they should "strive to be transparent, real, accountable, defensible, and enforceable."¹

CBF submits the following comments on the EnergyWorks Nutrient Credit Trading Certification Request for a poultry manure to energy gasification.

Assurance of Nutrient Reductions. We remain concerned with the fate of all nutrients in relation to the EnergyWorks' facility, including the use by-products and management on the agricultural fields that previously applied manure now diverted to EnergyWorks. The

¹ U.S. Environmental Protection Agency, Water Quality Trading Toolkit for Permit Writers, Executive Summary at ix (Aug. 2007, updated Jun. 2009).

calculations used by EnergyWorks must account for the fate and transport of nutrients throughout their lifetime.

The use of all by-products, including ash, must be tracked and verified in a transparent process to ensure that they do not result in pollution.

The mass balance approach used by EnergyWorks does not provide assurance that credits equate to actual reductions in nutrients on the farms that once received manure that is going to EnergyWorks. The credit calculations must explicitly consider the many factors occurring on land that now is no longer receiving manure that was diverted to EnergyWorks, including: the type of fertilizer, application rate, crop grown, time of year applied, setbacks from waterways or environmentally sensitive areas, etc.

Crop land that is receiving EnergyWorks' by-products, or using alternative nutrient sources following diversion of manure to EnergyWorks, must take all necessary precautions, such as correct application rates, methods, timing, and setbacks from environmentally sensitive areas. EnergyWorks needs to assure that all regulations pertaining to manure application are met, with Manure Management Plans, Nutrient Management Plans, and/or Nutrient Balance Sheets.
2, 3, 4

Third Party Verification. Independent, third party verification is the only way to assure a Trading Program is transparent and sound. In accordance with the EPA Final Technical Memorandum, verifiers are to be absent of conflict of interest.⁵ Allowing a financially compensated party responsible for credit generation to validate project installation, such as by self-verification or verification by a credit aggregator, is a conflict of interest and does not ensure the installation and long term maintenance of credit generating practices. CBF requests a regulatory change to the Trading Program to require third party, independent verification of nutrient credit generating projects. Third party verification is to include, at a minimum, an administrative review of certification paperwork, credit calculations, and periodic on-site visits to ensure project implementation and baseline conditions are being met. In addition, for projects including manure conversion technologies and manure export, a third party review should also include, at a minimum, verification of nutrient application on farms formerly receiving poultry litter that is now processed by EnergyWorks, calibration of any onsite monitoring equipment, proper grab sample procedures, laboratory results, and tracking of manure shipments.

² The Pennsylvania Code. Title 25, Environmental Protection. § 83.201. Nutrient Management.

³ The Pennsylvania Code. Title 25, Environmental Protection. § 91.36. Pollution control and prevention at agricultural operations.

⁴ The Pennsylvania Code. Title 7, Agriculture. § 130e. Commercial Manure Hauler and Broker Certification.

⁵ U.S. Environmental Protection Agency, Certification and Verification of Offset and Trading Credits in the Chesapeake Bay Watershed, Final Technical Memorandum (July 21, 2015).

Interstate Trading. We support the Department’s decision to not pursue EnergyWorks request for joint Pennsylvania/ Maryland certification. The necessary regulatory framework must first be developed and implemented before interstate nutrient credit trading may occur.

Proposal Typos and Inconsistencies. The letter submitted by EnergyWorks to the Department requesting an additional one year extension to their current certification is dated September 16, 2015. We believe this a typo and should be dated 2016. Additionally, EnergyWorks requests automatic additional extension beyond the one year, if the Department does not approval a new certification before September 30, 2017. We would like to point out that a one year extension would expire on September 30, 2017, thus negating the need for automatic extension beyond one year. Furthermore, the Certification Request submitted by EnergyWorks does not follow the new procedures established in the Phase 2 Watershed Implementation Plan Nutrient Trading Supplement.⁶ The proposal does not include the required application form for non-point source certification requests, DEP form 3800-FM-BPNPSM0503.

We thank the Department for the opportunity to provide comments on the Certification Request submitted by EnergyWorks. CBF believes that Nutrient Credit Trading can provide a cost-effective, environmentally-beneficial way to improve water quality with the appropriate assurances and rigor that can be applied to a National Pollutant Discharge Elimination System (NPDES) permit.

If you have any questions or would like to discuss these comments further, please feel free to contact us.

Sincerely,

/s/ Renee Reber

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⁶ Pennsylvania Department of Environment Protection, Phase 2 WIP Nutrient Trading Supplement (Original March 27, 2015 and Revised June 18, 2015).