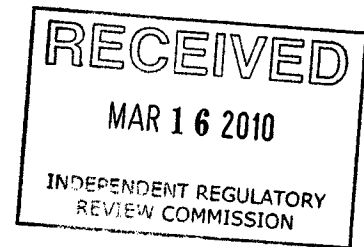


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## **Memorandum**

**TO:** Members of the Environmental Quality Board  
Pennsylvania Department of Environmental Protection

**FROM:** Grant Gulibon, Regulatory Specialist

**Date:** March 15, 2010

**Subject:** Comments on Draft Rulemaking—Title 25, Chapter 96  
(Water Quality Standards Implementation, Section 96.8—Use of Offsets  
and Tradable Credits from Pollution Reduction Activities in the  
Chesapeake Bay Watershed)

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On behalf of the members of the Pennsylvania Builders Association (PBA), I am pleased to submit the following comments on the draft rulemaking in Title 25, Chapter 96 (Water Quality Standards Implementation, Section 96.8—Use of Offsets and Tradable Credits from Pollution Reduction Activities in the Chesapeake Bay Watershed).

PBA believes that a functioning, viable nutrient credit trading program will focus resources on Pennsylvania's largest source of Bay pollution, allow other affected sectors to do their part to reduce nutrient discharges in the most cost-effective manner, and allow for critically needed economic growth to take place in large portions of the state. One of the primary improvements to the trading program sought by PBA and other stakeholders—the establishment of a nutrient credit trading “bank” or “exchange” designed to reduce the risks associated with the trading program and provide a measure of certainty and stability to potential buyers and sellers—is in the process of moving forward under the auspices of the Pennsylvania Infrastructure Investment Authority (PENNVEST) and the Department. PBA has and will continue to monitor the development of the “exchange” as it is further developed.

However, there are several other issues that must be addressed from the perspective of the housing industry regarding Pennsylvania's nutrient credit trading program. One of the most critical of those is need to clearly indicate that a mechanism will be in place to transfer the long-term responsibility for ensuring that nutrient credits are in place to offset the pollution loads generated by a new development from the builder/developer to a third party once a project is completed. Developers will be responsible for this for an initial

period of 5 years, but failure to explicitly authorize the development and use of such a mechanism will cause a multitude of difficulties for affected homebuilders, including how to properly price new homes (given the requirement to offset all new pollution loads for the lifetime of the home).

Second, the Department, to the extent that it does not already do so, must make transparent the information it used in calculating credits and offsets. The data, formulas and assumptions used have a large impact on land use decisions, and potential permit applicants who may have need to offset new discharges need the maximum amount of useful information available to them for this purpose.

Finally, another critical issue that the Department should consider (especially in light of the forthcoming Chesapeake Bay Total Maximum Daily Load (TMDL), which will require Pennsylvania to deal with offsetting pollution not only from point sources such as sewage treatment plants, but also that resulting from non-point sources such as runoff from agricultural and developed lands), is the need to develop offsetting options for stormwater. Given the potential for more stringent post-construction stormwater management requirements on new development, as well as the need to direct scarce public and private funding to the most efficient, cost-effective methods of nutrient and sediment pollution reduction, PBA has developed and advocated for the adoption of a "stormwater best management practice (BMP) offset" option as part of the state's Chapter 102 regulations. We believe that such an option may also have applicability to the nutrient credit trading program.

Under a "stormwater BMP offset" program, builders, developers and other applicants would be permitted to fund off-site stream buffers (or other BMPs) in return for offsets of certain PCSM BMP requirements. Applicants would still need to install all erosion and sedimentation control measures, as well as stormwater facilities to control the runoff rate to pre-development conditions. In particular, the proposal would offset stormwater infiltration areas—which will be a long-term problem, as noted previously, for all parties involved to guarantee maintenance and function—with off-site stream buffers.

It is well-documented that in Pennsylvania's portion of the Chesapeake Bay watershed, the greatest amounts of nitrogen, phosphorus and sediment pollution are generally originating from farmland in the south central region of the Commonwealth. Aerial photos of these areas show numerous farms along streams with little to no buffer coverage. At the same time, it is also well-documented that BMPs on farmland, such as buffers, are the most cost-effective means of reducing water pollution—far more cost-effective than installing infiltration areas on development sites, which are often a problem for homeowners and a source of complaints to builders.

Instead of designing and installing these infiltration areas, we would propose that a builder or designer work with the appropriate county conservation district to identify farm BMP projects, such as riparian forest buffers, that need funding. This process could work in a manner similar to that utilized in wetland banking, and it would assist the Department in enforcing existing conservation requirements on Pennsylvania. Once it is

implemented, farmers, the Department, EPA, and conservation districts could cooperate in securing a source of funding for these projects in order to:

- a) Maximize environmental benefits at a reasonable cost; and
- b) Minimize issues with long-term operation, maintenance and enforcement.

Farmers would need to grant a conservation easement along a stream in return for technical assistance to bring the farm into compliance and install the buffer. It may also be possible to generate and sell nutrient credits under this option, which could provide a source of long-term funding to farmers and/or conservation districts.

Given the funding and staff reductions that have been absorbed by the Department and conservation districts in recent years, the economic challenges facing the housing industry, and the implications of the forthcoming Chesapeake Bay TMDL, developing a “stormwater BMP offset” option with potential applicability to the nutrient credit trading program is an opportunity for all parties to benefit.

Thank you for the opportunity to submit these comments. If you have questions or require additional information concerning the comments submitted here prior to our meeting, please contact me at the address, phone or fax number listed in the header of this document, or e-mail me at [ggulibon@pabuilders.org](mailto:ggulibon@pabuilders.org).

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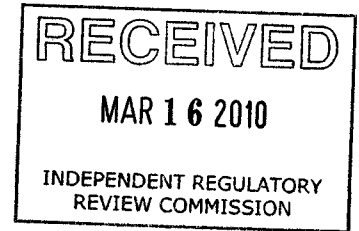
**From:** Grant Gulibon [ggulibon@pabuilders.org]  
**Sent:** Monday, March 15, 2010 5:00 PM  
**To:** EP, RegComments  
**Subject:** Comments on Draft Rulemaking-Title 25, Chapter 96 (Water Quality Standards Implementation, Section 96.8-Use of Offsets and Tradable Credits from Pollution Reduction Activities in the Chesapeake Bay Watershed)  
**Attachments:** Pennsylvania Builders Association EQB Comments--Chapter 96 Proposed Rulemaking (2010-03-15).pdf

Good afternoon:

On behalf of the Pennsylvania Builders Association (PBA), I am pleased to submit the following comments on the draft rulemaking in Title 25, Chapter 96 (Water Quality Standards Implementation, Section 96.8—Use of Offsets and Tradable Credits from Pollution Reduction Activities in the Chesapeake Bay Watershed). Thank you very much.

Best regards,  
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