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PA **Pennsylvania Farm Bureau**

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Phone (717) 761-2740 • FAX 731-3515 • www.pfb.com

INDEPENDENT REGULATORY
REVIEW COMMISSION

June 29, 2009

Ann Smith, Program Analyst
Water Planning Office
Pennsylvania Department of Environmental Protection
P.O. Box 2063
Harrisburg, PA 17105-2063

Re: Proposed amendment to Technical Guidance Document 392-0900-001, regarding eligibility of projects to generate tradable nutrient credits through conversion of farmland under the Commonwealth's Nutrient and Sediment Credit Trading Program (published in the May 30 issue of the *Pennsylvania Bulletin* at 39 Pa. Bull. 2747)

VIA EMAIL TRANSMISSION

Dear Ms. Smith:

Pennsylvania Farm Bureau appreciates the opportunity to provide comments relative to the aforementioned proposed amendment to Technical Guidance Document 392-0900-001 (hereafter referred to as "Document"). This Document establishes policy guidelines for determining whether and to what extent implementation of land use projects will be eligible for tradable nutrient and sediment reduction credits under Pennsylvania's Nutrient and Sediment Credit Trading Program. Farm Bureau is a statewide general farm organization with a membership of more than 44,000 farm and rural families in the Commonwealth.

The particular issue which is the focus of the proposed amendment is the eligibility for nutrient reduction credits to be claimed from projects that involve the idling of whole farms or substantial portions of farms. The current provisions of the Document would prohibit a person from claiming and applying nutrient reduction credits through idling of farms to off-site land development projects in order to meet the limitations in nutrient loadings that would otherwise imposed upon those areas being developed. But the Document currently would not prohibit a person from claiming and obtaining credits through conversion and development of the same farmland, provided that the development project is demonstrated to have reduced nutrient loadings on the land relative to farm use.

The proposed amendment would essentially prohibit tradable nutrient credits from being generated from any project that involves the idling of farmland to facilitate nonfarm development, regardless of whether the development occurs off-site or on the same site as the site where farmland is being idled. Farm Bureau supports the objective that the Department is trying to attain through the proposed amendment.

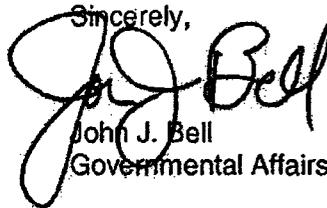
This issue received considerable attention by the Department and by stakeholder organizations participating in the Agricultural Workgroup to the Chesapeake Bay Tributary Strategy Steering Committee, when the Document was being first developed. Farm Bureau and other agricultural stakeholders were particularly concerned with the possibility that the nutrient trading program could be utilized by nonfarm developers to encourage significant development in traditionally farming areas. While we conceded to a middle-ground position to limit the application of nutrient credits from farmland conversion to only those projects where the development occurred on the same farm as the farm being idled, we were still fearful that this type of land conversion activity would have serious consequences on the continuity of farming and farmland in traditional farming areas.

Similar to the Department's recognition in its May 30 notice of the proposed amendment, we believe any effort to encourage nonfarm development through nutrient trading is in substantial conflict with not only the Governor's Executive Order that establishes the Commonwealth's Agricultural Land Preservation Policy but also with the prevailing public policy that is established under the Agricultural Area Security Law, the Right to Farm Law, the 2000 amendments to the Municipalities Planning Code, the Nutrient Management Act (recodified in 3 Pa.C.S. Ch. 5), the law creating the Agricultural Land Condemnation Approval Board, and numerous other statutes whose legislative purpose is to preserve the integrity and continuity of local agriculture and productive farmland in the Commonwealth.

We note with some concern the proposed amendment's general recognition that nutrient credits may be generated through retirement of farmland under federal farm conservation programs. We recognize that during the effective period in which the landowner is participating in federal conservation programs, there should be some recognition of potential for generating nutrient credits when reductions in nutrient loadings occur. However, we also feel that without provisions that establish clearer groundrules to limit and penalize post-enrollment idling or conversion of lands enrolled in federal conservation programs, the compensation provided through nutrient trading could become a significant means for financing longer-term land banking of farms for future nonfarm development. We believe the proposed amendment needs to more clearly and fully prescribe the limitations in post-enrollment uses of farmlands whose owners receive compensation for nutrient credits received through federal program enrollment.

Again, thank you for allowing us to share with you our views.

Sincerely,

A handwritten signature in black ink, appearing to read "John J. Bell". The signature is stylized and cursive, with the first name "John" and last name "Bell" clearly visible.

John J. Bell
Governmental Affairs Counsel



Pennsylvania Farm Bureau

510 S. 31st Street • P.O. Box 8736 • Camp Hill, PA 17001-8736 •

Phone (717) 761-2740 • FAX 731-3575 • www.pfb.com

March 15, 2010

John Hanger, Chairman
Environmental Quality Board
P.O. Box 8477
Harrisburg, PA 17105-8477

RE: Proposed rulemaking to amend 25 Pa. Code Ch. 96 (relating to water quality standards implementation) to add 96.8 (relating to use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay watershed), published in the February 13 issue of the *Pennsylvania Bulletin* at 40 Pa.B. 876

Dear Chairman Hanger:

The Pennsylvania Farm Bureau (PFB) would like to thank you for the opportunity to provide comments on the Chapter 96.8 Use of offsets and tradable credits from pollution reduction activities in the Chesapeake Bay Watershed Rulemaking. The PFB is the Commonwealth's largest farm organization with nearly 46,700 farm and rural member families. We are the state affiliate of the American Farm Bureau Federation (AFBF) whose nationwide membership represents the country's largest general farm organization.

Comment 1:

The preamble solicits comments on whether delivery ratios should be applied to permit limits when trading is chosen as the compliance option. The PFB feels that delivery ratios should not be applied to point sources because the nutrient trading program was not designed to reduce point source nutrient loads, but rather be a tool that municipalities can use to offset the cost of expensive capital upgrades or to "buy time" until they can prepare for upgrades.

Comment 2:

Section 96.8(a) – Definitions – Baseline (ii): More guidance is needed on how a Total Maximum Daily Load (TMDL) may affect baseline compliance. It was not clear if an operation fell under more than two TMDLs (Chesapeake Bay, local or other) which TMDL would take precedence. It was also not clear if an operation needed to meet the TMDL requirements before they could be considered to be in baseline compliance, or if they only needed to meet Pennsylvania's regulatory requirements for baseline before they start trading.

Comment 3:

Section 96.8(a) – Definitions – BMP- Best Management Practice (iii). This subsection should be changed to read "The term also includes riparian buffers, soil and slope stabilization measures, control of fertilization practices, and other actions and measures designed to reduce erosion, stormwater runoff, and runoff of pollutants from the land surface during precipitation events; or to reduce the contamination of groundwater with pollutants that may affect surface waters." This change is requested for several reasons that include:

- It was redundant to list reduction of soil runoff and reduction of sedimentation as benefits of soil erosion reduction. Sediments should be removed, since they are included in the definition of pollutants, and pollutants are included in this definition.

- Stormwater management, as a BMP, should be included.

Comment 4:

Section 96.8(e)(3)(v) – The credit reserve of 10% should be set in the proposed rulemaking. The purpose of the proposed rulemaking is to set the “ground rules” and by setting the credit reserve of 10%, the department will be added certainty to the credit reserve portion of the proposed rulemaking.

Comment 5:

Section 96.8(d)(2)(i) – Baseline requirements to generate credits and offsets – A date should be set in the proposed rulemaking by which an operations baseline compliance (conservation plan, manure management plan, nutrient management plan, etc.) is set and looked at. If an operation would not have the plans in place by that date, that operations baseline compliance date would be the date the plans are approved. By setting a specific date in the proposed rulemaking, the department would ensure that operations do not go backwards in management just to go back to current management practices to generate nutrient credits.

Comment 6:

Section 96.8(d)(2)(i) – Reference should be added that an operation must also meet Chapter 92.5a (CAFO’s), if applicable to their operation.

Comment 7:

Section 96.8(d)(3)(B) – Additional information should be included that no applications of mechanically applied manure be allowed in the 35 feet of permanent vegetation between the field and surface water. PFB recommends the use of language from Chapter 83 (Nutrient Management) which is “There is no mechanical application of manure within the buffer area”.

Comment 8:

Section 96.8(d)(3)(ii) – The statement “The department may establish other threshold requirements necessary to ensure effectiveness of the use of credits and offsets to meet legal requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay” should be deleted from the proposed rulemaking. The purpose of the proposed rulemaking is to set a precedent and standard and the inclusion of this statement allows the department too much flexibility in changing the standards and requirements of the program.

Comment 9:

Section 96.8(d)(5) – The statement “The department may establish other eligibility requirements to ensure effectiveness of the use of credits and offsets to meet legal requirements for restoration, protection and maintenance of the water quality of the Chesapeake Bay” should be deleted from the proposed rulemaking. The purpose of the proposed rulemaking is to set a precedent and standard and the inclusion of this statement allows the department too much flexibility in changing the standards and requirements of the program.

Comment 10:

Section 96.8(e)(3)(vi) – This provision should be clarified to expressly recognize that the tradable load indicated is for the Pennsylvania portion of the Chesapeake Bay Watershed. “The annual sum of all credits certified from nonpoint sources may not exceed Pennsylvania’s portion of the applicable tradable load calculated by the Department. The tradable load for the Pennsylvania portion for the Chesapeake

Bay Watershed is 5.7 million pounds of nitrogen per year and 396800 pounds of phosphorus per year, unless otherwise revised by the Department”.

Comment 11:

Section 96.8(e)(3)(vii) – This provision should add some clarifying statement that the credits may be available “to the applicant” for certification, if the funding source provider allows.

Comment 12:

Section 96.8(e) – We note the proposed rulemaking fails to include provisions currently included in the Department’s Technical Guidance Document (392-0900-001) that govern the eligibility of projects to generate tradable nutrient credits through conversion of farmland. This provision was the subject of a notice of amendment published in the May 30, 2009 issue of the *Pennsylvania Bulletin* (see 39 Pa.B. 2747). The notice, which pertained to eligibility for generation of tradable credits through the idling of whole farms or substantial portions of farms, was proposing to essentially prohibit tradable nutrient credits from being generated from any project that involves the idling of farmland to facilitate nonfarm development, regardless of whether or not the credits would be applied to the same site as the site whose farmland is being idled. At the time of the notice, the Guidelines authorized credits to be generated from idling of farmland, if the credits would be applied to development of the same idled farmland. PFB first believes that the regulations should address the issue of eligibility for generation of nutrient credits as a result of idling of whole farms or substantial portions of farms. Secondly, we believe the regulations should expressly prohibit the ability of nutrient credits to be generated and utilized in a manner that facilitates the idling and nonfarm development of farmland. Thirdly, we express our concern with respect to the ability of nutrient credits to be generated through manipulation of federal conservation programs to finance long-term land-banking of farms for future nonfarm development. We have attached our comments to the changes to Technical Guidance Document proposed by the Department in its May 30 notice, and would recommend the inclusion of regulatory provisions consistent with the attached comments.

Comment 13:

It is recommended that this proposed rulemaking not be specific to the Chesapeake Bay Watershed but worded so it can be used in other watersheds within Pennsylvania. Specific references to the Chesapeake Bay should be removed where necessary. This will affect the following:

- Title
- Section 96.8 (a) (Definitions) – Edge of segment ratio
- Section 96.8 (d) - Eligibility requirements for the Chesapeake Bay
- Section 96.8 (d) (3) (ii)
- Section 96.8 (d) (5)
- Section 96.8 (e) – Certification requirements for the Chesapeake Bay
- Section 96.8 (e) (3) (vi)
- Section 96.8 (f) - Registration requirements for the Chesapeake Bay.
- Section 96.8 (h) - Water quality and TMDLs.
- Section 96.8 (h) (4) (ii)

This will not affect the following:

- Section 96.8 (b) - Chesapeake Bay water quality
- Section 96.8 (c) - Methodology
- Section 96.8 (g) - Use of credits and offsets to meet NPDES permit requirements related to the Chesapeake Bay.

Farm Bureau appreciates the opportunity to provide comment to the proposed Chapter 96 Water Quality Standards Implementation rulemaking. We hope our comments are taken seriously. Please feel free to contact me at 717-761-2740 ext. 542, gmhazard@pfb.com with any questions or to follow-up on these comments.

Sincerely,

A handwritten signature in black ink that reads "George Hazard". The signature is written in a cursive style with a large, prominent "G" at the beginning.

George M. Hazard
Pennsylvania Farm Bureau
Natural Resources Director
Governmental Affairs Division
510 S. 31st Street
Camp Hill, PA 17001-8736

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Chambers, Laura M. 2821

2010 MAR 24 PM 9:09

From: George Hazard [GMHazard@pfb.com]
Sent: Monday, March 15, 2010 4:54 PM
To: EP, RegComments
Subject: Comments on Chp 96 Rulemaking

INDEPENDENT REGULATORY
REVIEW COMMISSION

Farm Bureau appreciates the opportunity to provide comment to the proposed Chapter 96 Water Quality Standards Implementation rulemaking. Please feel free to contact me at 717-761-2740 ext. 542, gmhazard@pfb.com with any questions or to follow-up on these comments.

George M. Hazard
Pennsylvania Farm Bureau
Natural Resources Director
Governmental Affairs Division
510 S. 31st Street
Camp Hill, PA 17001-8736

George Hazard: Natural Resource Director: Pennsylvania Farm Bureau
510 S. 31st Street: PO Box 8736: Camp Hill, PA 17001-8736: www.pfb.com:
gmhazard@pfb.com: 717.761.2740

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