



MEMORANDUM

DATE: September 16, 2008
TO: Lisa Reisteter, Senator Brubaker's Office
FROM: David Mager & Jeremy Rowland, Bion
RE: Bion Comments on SB 1493

~~~~~  
We are appreciative of the efforts of the authors and sponsors of this Bill to work at making Pennsylvania's nutrient credit trading program a success in terms of both mitigating nutrient pollution flowing to the creeks, rivers and stream and ultimately the Chesapeake Bay, and in terms of creating a model which can be exported to other states.

Since their inception in the early 1990s, environmental credits have proven to be the most cost effective way of mitigating pollution. When market forces are invited to combat environmental pollution, the winner has always been the American taxpayer/ratepayer who would otherwise bear the burden of paying higher costs for environmental mitigation.

Bion Environmental Technologies has in excess of 175,000 PA DEP approved nitrogen credits and more than 20,000 phosphorus credits for sale on a long term basis on the open market. It is from that perspective that we have reviewed and below provide suggested modifications to SB 1493.

General Issues/Comments

In general, if there is a single credit buyer or large aggregator, as would be the case with the "Board", then it is the aggregator and not market forces which would determine credit prices. If not structured the right way, this top heavy approach could very well disincentivize the kind of free market innovation that is required to generate solutions. Further, it is not clear who would bear the cost of the Board storing credits in a bank for potential rainy day use (are these from the DEPs 10% credit bank?). They can't be stored for long as credits can only be used in the year they are generated.

The major challenges we see with the existing condition of the DEP's nutrient credit trading program are two-fold, which are outlined below.

- The DEP needs to provide long term certainty for credit calculation protocols in order to support long term credit trades and enhance private and voluntary infrastructure investments.
- Similarly, the DEP credit program Farm Preservation policy needs to be tweaked to allow for the continuation of credits generated in the event a participating farm unexpectedly closes. This clause would only be activated in the case of a farm hosting an active credit agreement involving infrastructure investments and would only last during the remaining years of that credit contract. It could not be renewed.

The above two points form the core of the recommended changes we propose to SB 1493 as shown on the legislative edits below.

### Suggested Legislative Edits

Section 305. Calculation of credits.

(c) Farmland preservation.--Credits shall not be generated from the purchase and idling of whole or substantial portions of farms to provide credits for use offsite. Credits may be generated when converting one land use to another, as provided by regulation unless the farm closes while operating within an active nutrient credit trade agreement, in which case the credits will continue to be generated through the life of the existing credit trade agreement which cannot then be renewed.

(d) Long Term Credit Certainty.-- Absent requirements at the federal level, credit calculation methodologies shall be approved for the duration of the applicable credit trade agreement, with a maximum lifetime of 20 years.

**First Comment** (Section 305(c)): The purpose of this edit was to provide some certainty to private capital markets that lend money for the development of infrastructure based nutrient removal/control projects. The goal is to limit the risk to investors that the farm will close following a major infrastructure investment. Absent some sort of certainty provision in this regard it will be difficult to attract private capital to this program. This provision as modified provides for limited exceptions to the farmland preservation clause and would in no way have a negative impact on the environment.

**Second Comment** (Section 305 (d)) - In order to attract private capital for the purpose of investments in nutrient control projects,

the state needs to provide some level of certainty that they won't negate the nutrient credit protocol and corresponding credit calculation methodology for the duration of the credit agreement, with the obvious exception of some non-compliance issue or federal mandates. Absent such certainty, private capital would need to amortize over a very short time period as a means to mitigate risk which would severely increase the price of privately funded nutrient mitigation. A correlation would be if a municipal authority was forced to finance an upgrade over a 2-3 year amortization time frame. In order to effectively treat livestock manure with a high moisture content (dairy/beef cattle, hogs), on-site treatment is the most direct and effective. This type of treatment requires capital investments, which by and large needs to be drawn from the private sector - hence the above focus on enhancing private investment through certainty.

## **CHAPTER 5**

### **NUTRIENT CREDIT TRADING BOARD**

Section 501. Scope.

This chapter relates to the powers and duties of the Nutrient Credit Trading Board.

Section 502. Board established.

There is hereby established a Nutrient Credit Trading Board. The board shall adopt policies and implement programs to maximize the cost-effectiveness of purchasing and selling ~~purchase and sell~~ credits in the Chesapeake Bay watershed and competitively fund projects that generate credits in the Chesapeake Bay watershed.

**Third Comment** (Section 502)- It is important that the wide-ranging representation of the Board be mandated to be open to the most cost effective solutions, and not just those that benefit existing programs and entrenched interests. As noted by Jennifer Cotting of the EPA's Region 3 Environmental Finance Center, the most effective means of funding in terms of nutrient reductions per \$ spent is focused on the use of competitively bid nutrient reduction RFPs originating from one central organization.

This type of an approach also maximizes the participation of innovative private capital sources rather than relying solely upon government funding. It seems to us that the Board described in this legislation could serve such a function.