

Title 26

DEPARTMENT OF THE ENVIRONMENT

Subtitle 08 Water Pollution

Chapter 11 Maryland Water Quality Trading Program

Authority: Environment Article, §§9-313, 9-315, 9-319 and 9-325, Annotated Code of Maryland
Agriculture Article, §§8-901 and 8-904, Annotated Code of Maryland

.01 Purpose.

A. The purpose of this chapter is to establish a Water Quality Trading Program between the agricultural, stormwater, wastewater, and onsite sewage disposal sectors that attracts public and private participation and enhances Maryland's effort to protect and restore not only the water resources of the Chesapeake Bay and its tributaries, but also local waters. Trading may supplement the more traditional governmental approaches for improving water quality and has the potential to achieve results faster and at a lower cost, accelerating efforts to restore and improve water quality. The program expands opportunities for point sources and nonpoint sources by creating a water quality marketplace that allows them to meet and maintain pollutant load limits through the acquisition of credits generated by pollutant load reductions elsewhere in Maryland's portion of the Chesapeake Bay watershed as long as the trade does not cause or contribute to a violation of State water quality standards.

B. The Program is voluntary and relies on a market-based approach to offer economic incentives for pollutant reductions from point and nonpoint sources.

(1) The State provides the infrastructure to support trading through an online suite of tools that includes:

(a) The Maryland Nutrient Tracking Tool used by agricultural credit generators;

(b) The central Registry; and

(c) The optional Marketplace.

(2) The price of each credit is negotiated between the credit seller and the credit buyer.

.02 Scope.

A. This chapter establishes Maryland's Water Quality Trading Program and sets forth the criteria under which the program will operate, including:

(1) Purpose;

(2) Definitions;

(3) Program Framework;

(4) Baseline Requirements;

- (5) *Calculation of Credits;*
- (6) *Procedure for Certification;*
- (7) *Trading Requirements;*
- (8) *Usage of Credits by Point Sources;*
- (9) *Registration of Trades;*
- (10) *Verification and Reporting Requirements;*
- (11) *Public Participation;*
- (12) *Enforcement; and*
- (13) *Appeal Process.*

B. Notwithstanding the general prohibition on interstate trading in Regulation .04 of this chapter, the Department may allow pilot projects in which credits generated in another state are accepted by the Maryland Water Quality Trading Program if:

- (1) The credits are generated in the Potomac River basin or the Susquehanna River basin;*
- (2) Regardless of any other state's program requirements, the credit generator meets the certification requirements of Regulation .07 of this chapter or the requirements of COMAR 15.20.12.07; and*
- (3) The Department offers an opportunity for public comment prior to the Department's decision on certification of the credits and their placement on the Registry.*

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms defined.

- (1) "Aggregator" means a person that funds, generates, owns, or assembles credits resulting from a number of point or nonpoint sources to resell them.*
- (2) "Agricultural Land" has the meaning stated in COMAR 15.20.12.02.*
- (3) "Agricultural nonpoint source" means a nonpoint source that is an agricultural operation.*
- (4) "Agricultural operation" has the meaning stated in COMAR 15.20.12.02.*
- (5) "Allocation" means the share of the total amount of pollutants that impaired waters can receive from a specific source discharger.*

(6) “Baseline” means the practices, actions, or levels of nitrogen, phosphorus, or sediment reductions that must be achieved before a credit seller becomes eligible to enter the trading market and trade credits.

(7) “Bay Restoration Fund (BRF)” means the fund established by Environment Article, §9-1605.2, Annotated Code of Maryland.

(8) Best management practice (BMP).

(a) “Best management practice” means a practice, or combination of practices, that is determined by the Chesapeake Bay Program to be an effective and practicable method of preventing or reducing pollutants generated by point or nonpoint sources so as to minimize the movement of those pollutants into waters of the State or mitigate flooding.

(b) BMPs include agricultural and urban structural and nonstructural pollution controls, operations, and maintenance procedures and practices that prevent or reduce pollutants.

(9) “Broker” means a person that connects a credit seller and a credit buyer and helps to negotiate a trade between them.

(10) “Cap” means a legally enforceable aggregate mass load limit contained in a discharge permit.

(11) “Certification” means the process in which credits are quantified by the Department or the Department of Agriculture and placed on the Registry, or the result of this process.

(12) “Chesapeake Bay Program (CBP)” means the regional partnership of federal and State agencies, local governments, nonprofit organizations, and academic institutions that leads and directs Chesapeake Bay restoration and protection.

(13) “Chesapeake Bay watershed model (CBWM)” means the latest model adopted by the Chesapeake Bay Program used to simulate loading and transport of nitrogen, phosphorus, and sediment from pollutant sources throughout the Chesapeake Bay watershed and provide estimates of watershed nitrogen, phosphorus, and sediment loads resulting from various management scenarios.

(14) “Credit” means a unit of pollution reduction of one pound of nitrogen, phosphorus, or sediment.

(15) “Department” means the Maryland Department of the Environment.

(16) “Edge of Tide (EoT) ratio” means a numeric adjustment applied to a trade to compensate for the rate at which pollutants are reduced through natural processes, such as hydrolysis, oxidation, and biodegradation, and manmade structures such as dams, on their way through nontidal tributaries to the tidal waters of the Chesapeake Bay or its tidal tributaries.

(17) “Enhanced nutrient removal (ENR)” means a wastewater treatment technology that reduces the nitrogen and phosphorus concentrations in wastewater effluent to achieve permit limits equivalent to concentrations of no more than 4 milligrams per liter nitrogen and 0.3 milligrams per liter phosphorus, as calculated on an annually averaged basis.

(18) *“Floating Cap” means a permitted effluent limitation applicable to an ENR facility, funded by the Bay Restoration Fund, which is calculated at the end of each calendar year using the end of the calendar year annual cumulative flow for the facility, multiplied by the applicable nitrogen or phosphorus concentration, and then converted to units of pounds per year.*

(19) *“Generator” means the original source of pollution reductions embodied in a credit, regardless of subsequent buyers and sellers of the credit.*

(20) *“Ground water” has the meaning stated in COMAR 26.08.01.01.*

(21) *“Industrial waste” has the meaning stated in COMAR 26.08.01.01.*

(22) *Load.*

(a) *“Load” means a pound or pounds of nitrogen or phosphorus or a pound, pounds, ton, or tons of sediment discharged by a point or nonpoint source per unit of time.*

(b) *“Load” is calculated or estimated using pollutant concentrations and flow and converting them to pounds or tons.*

(23) *“Load allocation (LA)” means the portion of a receiving water's loading capacity that is attributed to one of either its existing or future nonpoint sources.*

(24) *“Marketplace” means an online system where information is exchanged between credit owners or their representatives and credit buyers.*

(a) *Credit generators may create listings linked to their marketplace accounts to display certified credits they have for sale and initiate trades with potential credit buyers; and*

(b) *Credit buyers may post credit needs or solicit offers.*

(25) *“Maryland Nutrient Tracking Tool (MNTT)” means an online performance-based calculation system that enables users to analyze agricultural parcels and their management to determine eligibility and credit generation potential for participation in the Maryland Water Quality Trading Program.*

(26) *“Maryland Water Quality Trading Program (Program)” means the program under this chapter that establishes the policies and procedures to support market-based trading activities to enhance water quality and to certify, verify, and register non-agricultural point and nonpoint source nitrogen, phosphorus and sediment credits.*

(27) *“Municipal Separate Storm Sewer System (MS4)” has the meaning stated in 40 C.F.R. §122.26.*

(28) *“MS4 Permittee” means a person that has been issued a Phase I MS4 permit or a Phase II MS4 permit as defined in 40 C.F.R. §122.26.*

(29) *“National Pollutant Discharge Elimination System (NPDES) permit program” means the national system for issuing permits as designated by 33 U.S.C. §1251 et seq., its amendments, and all regulations and rules adopted under the federal Clean Water Act and State law.*

(30) *“Non-regulated source” means a point source or nonpoint source that is not regulated under an NPDES discharge permit and that is not an agricultural operation.*

(31) *“Nonpoint source” means a source of pollution that is not from a discernible, confined, and discrete conveyance, or other point source, as point source is defined in 33 U.S.C. §1362.*

(32) *“Onsite sewage disposal system” means a sewage system that discharges treated effluent into the ground, such as a septic system.*

(33) *“Performance-based benchmark” means a wastewater point source annual effluent load which is calculated at the end of each calendar year using the end of the calendar year annual cumulative flow for the facility, multiplied by the applicable assigned nitrogen or phosphorus performance concentration converted to units of pounds per year, where the assigned annual average effluent performance concentration basis is:*

(a) Equal to or less than 4.0 mg/l for nitrogen or .3 mg/l for phosphorus; and

(b) If applicable, equal to or less than the concentration basis of the permit’s required floating cap.

(34) *“Person” has the meaning stated in COMAR 26.08.01.01.*

(35) *“Phase 6 Model” means the Chesapeake Bay Watershed Model used in the 2017 Midpoint Assessment of the Chesapeake Bay TMDL.*

(36) *“Point source” has the meaning stated in 33 U.S.C. §1362.*

(37) *“Pollutant reduction” means the difference between the baseline load established for each point or nonpoint source and the load discharged to either ground or surface water after installation of the BMP.*

(38) *“Registration” means the recordation of a credit or trade in the Registry.*

(39) *“Registry” means a publicly accessible online database system used by the Department and the Department of Agriculture to administer the Water Quality Trading Program by tracking credit-generating BMPs, verification activities, credits, trades and credit usage records.*

(40) *“Reserve” means a five percent reduction in the total number of certified credits, the result rounded down to the next whole number, posted on the Registry to create a portion that is set aside in a pool of certified credits.*

(41) *“Sector” means each of the following groups of persons:*

(a) Agricultural dischargers;

(b) Stormwater dischargers;

(c) Sewage treatment and industrial waste dischargers;

(d) Persons having onsite sewage disposal systems; and

(e) Forests.

(42) “Segmentshed” means a discrete land area that drains into one of the Chesapeake Bay Program tidal segments for which a TMDL is established in the Chesapeake Bay TMDL.

(43) Source discharger.

(a) “Source discharger” means a point source regulated under NPDES that has received an individual or aggregate wasteload allocation; or

(b) A nonpoint source that is assigned a share of the aggregate load allocation for an entire sector.

(44) “Stormwater” has the meaning stated in COMAR 26.17.02.02.

(45) “Stormwater point source” means a regulated stormwater discharger such as a MS4 permittee, or a NPDES Industrial stormwater permittee.

(46) “Technology-based effluent limitation (TBEL)” means a permit limit for a pollutant that is based on the capability of a treatment method to reduce the pollutant to a certain concentration or loading.

(47) “Total Maximum Daily Load (TMDL)” means a calculation for an impaired water body of the maximum amount of a pollutant the water body can receive and still meet applicable water quality standards in accordance with federal Clean Water Act requirements.

(48) “Trade” or “Trading” means a transaction, sale, or other exchange of credit through a contractual agreement between a credit generator or owner and a credit buyer.

(49) “Uncertainty ratio” means a numeric adjustment to a trade to compensate for possible discrepancies in estimated pollutant reductions resulting from inaccuracy in credit estimation methodology or variability in project performance, or to provide a margin of safety in the achievement of water quality goals.

(50) “Wasteload allocation (WLA)” has the meaning stated in COMAR 26.08.01.01.

(51) “Wastewater point source” means a sewage treatment or industrial waste discharger that has applied for and received a NPDES or other State discharge permit issued pursuant to COMAR 26.08.04.

(52) “Watershed” means an area of land that drains all the streams and rainfall to a common outlet such as the outflow of a reservoir, mouth of a bay, or any point along a stream channel.

.04 Maryland Water Quality Trading Program Framework.

A. Pollutants Eligible for Trading. Nitrogen, phosphorus, and sediment are the only pollutants eligible for credit trading and may be traded independently or in any combination.

B. Maryland Trading Regions.

(1) Any trade must occur within the same trading region.

(2) The Department has established the following trading regions:

(a) Potomac River Basin;

(b) Patuxent River Basin; and

(c) Eastern Shore and Western Shore River Basins, including the Maryland portion of the Susquehanna Basin.

C. Program Participation.

(1) Except for interstate pilot projects under Regulation .02 of this chapter, a person may only use credits generated and sold within the State to:

(a) Comply with the applicable nitrogen, phosphorus, and sediment load or wasteload allocations of the Maryland portion of the Chesapeake Bay TMDL, local TMDLs, NPDES permit requirements; or

(b) Improve water quality.

(2) Other than persons generating credits under the provisions of COMAR 15.20.12, a person generating credits under the Maryland Water Quality Trading Program shall:

(a) Meet appropriate baseline requirements in accordance with Regulation .05 of this chapter;

(b) Install a BMP approved by the Chesapeake Bay Program that is acceptable to the Department;

(c) Demonstrate a load reduction below the baseline requirements that is acceptable to the Department and calculate credits in accordance with Regulation .06 of this chapter; and

(d) Submit a Certification and Registration form to the Department for credit certification in accordance with Regulation .07 of this chapter.

D. Limitations.

(1) This chapter does not apply to wastewater point source to wastewater point source trading.

(2) No credit shall be offered for trade except in compliance with the provisions of this chapter.

(3) Except those BMPs implemented in conformance with Special Conditions III.A.1.f of General Permit No. 12SW, Stormwater Associated with Industrial Activities, any BMP implemented to satisfy regulatory requirements, including those related to new development and redevelopment, prior to the effective date of this chapter, may not be used to generate a credit.

(4) Credits may be traded only after they have been certified, verified, and registered in accordance with this chapter or, for agricultural credits, after they have been certified, verified, and registered in accordance with COMAR 15.20.12.

(5) For the purposes of this chapter and except as provided in paragraphs (a) and (b) of this subsection and COMAR 15.20.12.05.B(3), federal, State, and county grant funding may be used to meet a trading baseline, but may not be used to generate a credit.

(a) A wastewater treatment plant upgraded to ENR that accepts BRF grant funding for operation and maintenance to achieve a nitrogen discharge of 3mg/l and a phosphorus discharge of 0.3 mg/l may only generate credits for performance below 3mg/l of nitrogen and below 0.3mg/l of phosphorus.

(b) Any other non-agricultural BMP funded in whole or in part by federal, State, county, or private grants or loans may generate and sell credits, without restriction, unless otherwise prohibited by the funding source or funding agreement.

(6) The Department is not responsible or liable for the performance of a credit-generating project certified pursuant to the requirements of this chapter.

(7) The acquisition of credits for compliance purposes shall not eliminate any requirement to comply with local water quality standards, permits, or other legal requirements.

E. Water Quality Trading Program Registry.

(1) The Department, in consultation with the Maryland Department of Agriculture, shall establish and maintain the Registry and the Marketplace.

(2) Pursuant to this chapter and COMAR 15.20.12, all certified credits shall be posted on the Registry.

(3) The inclusion of credits on the Registry or the Marketplace is not a representation by the Department or the credit seller that the credits will satisfy the specific regulatory requirements of the credit buyer.

.05 Baseline Requirements.

A. All baselines shall be consistent with the 2010 Chesapeake Bay TMDL and any local TMDL, as may be amended from time to time.

B. The baseline for an agricultural nonpoint source shall be determined by the Department of Agriculture in accordance with COMAR 15.20.12.

C. The baseline for a wastewater point source shall be determined by the Department based on an annual loading limit wasteload allocation established in the wastewater point source's NPDES discharge permit.

D. The baseline for a stormwater point source is the restoration requirement of the stormwater point source's current NPDES discharge permit.

E. Except as may be revised by subsequent versions of the Chesapeake Bay Watershed Model, the baseline for a non-regulated source shall be the pollutant load generated under the conditions that existed prior to installation of the BMP, as calculated using assessment tools consistent with the Chesapeake Bay Program modeling tools and accepted by the Department.

F. Except as may be revised by subsequent versions of the Chesapeake Bay Watershed Model, the baseline load per equivalent dwelling unit for an onsite sewage disposal system is:

(1) 18.56 pounds of nitrogen per year for a system located in the Critical Area for the Chesapeake and Atlantic Coastal Bays;

(2) 11.60 pounds of nitrogen per year for a system located within 1,000 feet of surface water; and

(3) 6.96 pounds of nitrogen per year for all other systems.

.06 Calculation of Credits.

A. Wastewater Point Sources. Credits generated by a wastewater point source shall be based on that wastewater point source's performance.

(1) Credits shall be calculated and reported under the terms of the required wastewater discharge permit at the end of each calendar year as the load remaining after subtracting actual annual effluent nutrient load from the performance-based benchmark load.

(2) The annual effluent nutrient load shall be calculated using the end of the calendar year annual cumulative flow for the facility, multiplied by the actual effluent nitrogen or phosphorus concentration converted to units of pounds per year.

B. Stormwater Point Sources and Non-Regulated Sources. Stormwater point source and non-regulated source credits shall be calculated using assessment tools consistent with the Chesapeake Bay Program modeling tools and accepted by the Department.

C. Agricultural Nonpoint Sources. Nonpoint source credits on agricultural land shall be calculated using the Maryland Nutrient Tracking Tool in accordance with COMAR 15.20.12.

D. Onsite Sewage Disposal Systems. Nitrogen credit for an onsite sewage disposal system upgrading to the best available technology is calculated as the load remaining after subtracting the onsite sewage disposal system baseline load established in accordance with Regulation .05 of this chapter from the onsite sewage disposal system load remaining after upgrade of the system.

.07 Procedure for Certification.

A. Credits are not valid or tradable until certified and placed on the Registry.

(1) Agricultural credits are certified by the Maryland Department of Agriculture in accordance with COMAR 15.20.12.07.

(2) Wastewater point source credits are certified by the Department through issuance of an NPDES permit.

(3) All other credits are certified by the Department according to §(B) of this regulation.

B. A person who applies to the Department for certification of a credit shall complete and sign a Certification and Registration Form provided by the Department, which will include:

(1) Identification of the location and segmentshed where the BMP was implemented and a map identifying the location and boundaries of the BMP;

(2) Documentation that the Generator either owns the property or has the permission of the landowner to install, access, and maintain the BMP and to apply for certification of credits;

(3) A description of the BMP, including:

(a) A description of the permits required for its installation and evidence establishing that it was installed in accordance with the laws, regulations, and programs of applicable local, state, and federal authorities;

(b) Verification in accordance with Regulation .11 of this chapter; and

(c) A plan for maintaining the BMP during the lifespan of the credit.

(4) Supporting documentation that explains:

(a) Which tool was selected to determine the requested number of credits;

(b) How the project satisfies the baseline requirements in Regulation .05 of this chapter; and

(c) How the credits were calculated to meet the nitrogen, phosphorus, and sediment reduction amounts claimed in the application.

(5) Any other information the Department deems necessary to review the Certification and Registration Form, and certify the credits.

C. As a condition of the Department's certification of a credit, the applicant and landowner shall agree in writing to provide the Department, verifier, and their agents with access to the BMP at all reasonable times during the lifespan of the credit.

D. Upon review and approval of the information submitted in the Certification and Registration Form, the Department shall assign each credit or block of credits a unique registration number and place the certified credits on the Registry.

E. If the Department denies the Certification and Registration Form, the Department shall provide the basis for the denial to the applicant.

F. The credit owner shall update the credit registration, in writing within 30 days, to the Department and the credit buyer, if applicable, if there is a change in:

(1) The BMP used to generate the credit that could reasonably be expected to affect its certification;
or

(2) *The ownership of the property where the BMP is located.*

H. The BMP generates credits once it is certified.

.08 Trading Requirements.

A. Credit trades may occur with or without the participation of an Aggregator or Broker.

B. In the event of a default in a trade contract, expiration of a credit, or suspension or revocation of a credit, the buyer using the credit remains responsible for complying with any NPDES and State discharge permit or other regulatory requirement that the credit was intended to satisfy.

C. The following shall be applied to all trades:

(1) Uncertainty Ratio.

(a) An Uncertainty ratio of 1:1 shall be applied to trades involving credits generated by nonpoint sources and acquired by stormwater point sources or other non-regulated sources.

(b) An Uncertainty ratio of 1:1 shall be applied to trades involving implementation of BMPs for land conservation that includes protection through an irrevocable conservation easement or other instrument attached to the property deed and recorded with the local Circuit Court.

(c) An Uncertainty ratio of 2:1 shall be applied to trades involving credits generated by nonpoint sources and acquired by wastewater point sources, unless the generator, seller or buyer of the credit is able to demonstrate to the Department that the lower ratio is justified and protective of water quality standards.

(2) Edge of Tide Ratio.

(a) An EoT ratio of 1:1 shall be applied to trades when a credit is generated in the same segmentshed in which the credit buyer uses it.

(b) An EoT ratio of other than 1:1 shall be applied to trades when a credit buyer and credit seller are trading in different segmentsheds of a Maryland watershed. The appropriate ratio shall be calculated using assessment tools consistent with the Chesapeake Bay Program modeling tools and accepted by the Department.

(c) EoT ratios for trades with wastewater point sources will be determined by the Department based on the latest Chesapeake Bay Model used by the Department in issuing permits with trades.

D. Reserve.

(1) A Reserve shall be applied to each credit when it is certified to create a pool of credits that may be used by the Department to:

(a) Cover the loss of certified credits from a BMP damaged by events arising from sudden and reasonably unforeseeable events beyond the control of the person responsible for the maintenance of the BMP, including acts of God;

(b) Replace purchased credits that become unavailable due to the failure or underperformance of a BMP;

(c) Address a lack of readily available credits; or

(d) Improve the overall water quality during a year when the credits in the Reserve are not used to support other purposes detailed in this chapter.

E. Lifespan of Certified Credits.

(1) A BMP may only generate credits when it is installed and placed into operation and all operational and maintenance guidelines are followed.

(2) Credits may be certified for more than one year but shall be applied annually.

(3) The Department shall include the number of years a credit is generated as part of the credit certification.

F. Local Water Quality.

(1) Trading may not cause nor contribute to local water quality impairments and prevent the attainment of local water quality standards.

(2) Where necessary to ensure compliance with local water quality standards, credits used to meet those standards shall be limited to those credits generated upstream from the location where the credit user's discharge reaches impaired waters.

G. Prohibitions.

(1) At its discretion, the Department may prohibit the following persons from generating credits if the Department determines:

(a) A permittee in noncompliance with permit terms;

(b) A non-regulated source or owner of a onsite sewage disposal system that is not in compliance with COMAR 26.04.03, 26.17.01, 26.17.02, 26.17.04, 26.23, or 26.24, if applicable;

(c) An agricultural operation that is not in compliance with COMAR 15.20.12; or

(d) A person who has previously violated any provision of the Environment Article or any regulation adopted under the Environment Article.

.09 Usage of Credits by Point Sources.

A. In order to use traded credits to fulfill permit requirements, a credit buyer shall select credits that meet the limitations in this chapter, including limitations relating to credit lifespan, trading, trading regions, and local water quality standards and requirements.

B. The use of a credit shall be consistent with the credit's certification.

C. The Department shall prorate the amount of certified credits generated from any BMP for use in the year the credits are certified, while the total amount of certified credits generated from any BMP are not valid for use until the following year starting January 1.

D. Credits may not be used for the purpose of complying with Technology-Based Effluent Limitations.

E. The use of certified credits by a point source shall be subject to the terms and conditions of the permit to which the certified credits apply.

F. Permits may contain conditions on the use of certified credits, including:

(1) The extent to which the requirement of the permit may be satisfied with certified credits; and

(2) When, and from what source, certified credits may be acquired by the permittee.

.10 Registration of Trades.

A. A credit buyer shall notify the Department about each trade by filing a form provided by the Department within 15 days after the trade.

B. Within 15 days after receipt of the notification form required by §A of this regulation, the Department shall update the Registry, including the registration number for the credit, its location, duration, and the intended use of the credit.

C. The Department shall update the Registry within 30 days after receiving notice from the credit buyer of a change in the intended use of the credit.

.11 Verification and Reporting Requirements.

A. In its certification of a credit, the Department shall state the frequency at which the credits shall be verified, which shall be in accordance with local, State, and federal law and permit requirements, but shall be no less frequently than every three years.

B. Verification of a credit shall comply with the following requirements:

(1) Verification of credits generated by a wastewater point source shall include a report submitted to the Department annually for approval which includes certified discharge monitoring reports, appropriate annual reports, inspections, and any other reporting terms specified within the wastewater point source permit or required by the Department.

(2) Verification of credits generated by any other source shall be performed by a:

(a) A State or county inspector;

(b) A professional engineer registered in Maryland, or

(c) A Department-approved verifier that:

(i) Has the appropriate education, expertise, and training to perform the verification;

(ii) Does not hold an interest in the operation or entity generating the credit; and

(iii) Was not involved in the original application or qualification of the credits.

C. Each report prepared by an inspector or verifier in accordance with §B(2) of this Regulation shall include:

(1) Documentation that the BMP implemented continues to meet baseline compliance and that the credit generating BMP continues to be operated and maintained in accordance with the terms of the trading contract and the requirements of this chapter; and

(2) Confirmation that no deficiencies exist and no corrective measures are needed or a detailed description of deficiencies and required corrective actions.

D. Based on the information obtained in the verification reports, the Department shall update the Registry as necessary.

.12 Public Participation.

A. The Department shall provide notice, and an opportunity for comment and a hearing, if requested, for NPDES permits that propose to allow trading under this chapter in accordance with the federal Clean Water Act and Code of Federal Regulations for new permits or modification of existing permits, as applicable.

B. All credit trades by a stormwater point source permittee will be reported in an annual report and made available to the public on the Registry.

.13 Enforcement.

A. If a BMP is not performing in conformance with its certification, the Department may order repairs or other remedies to address or eliminate any deficiencies, within a time period determined by the Department.

(1) The Department may also require:

(a) Additional inspections; and

(b) Written substantiations that corrective measures have been taken.

(2) A corrective action order does not preclude the Department from exercising its enforcement authority.

B. The Department may suspend or revoke certification of a credit if:

(1) There are any violations of this chapter;

(2) A BMP is not performing in conformance with its certification;

(3) The Department determines that misleading, false, or fraudulent information was provided in the application for certification of such credit or any other submission related to such credit; or

(4) Any other action or inaction by a credit seller or credit buyer that the Department determines provides good cause to suspend or revoke such certification.

C. Within 30 days of a determination to suspend or revoke a certification, the Department will:

(1) Issue a notice of the suspension or revocation of credit certification, including an effective date thereof, to the credit seller or credit buyer; and

(2) Update the Registry to reflect the suspension or revocation.

D. Suspension or revocation of credit certification does not preclude any other legal action that may be taken by the Department or another public or private entity.

.14 Appeal Process.

Any person aggrieved by the suspension or revocation of a credit taken in accordance with this chapter shall have the right to review in accordance with the provisions of the Administrative Procedure Act, State Government Article, Title 10, Subtitle 2, Annotated Code of Maryland.