

OFFSETS NARRATIVE

May 4, 2016 Regulatory Advisory Committee (RAC) Meeting

Offset provisions are explained in Section 1.7 of the Delaware Sediment and Stormwater Regulations (DSSR) and referred to in subsequent Sections 5.2.3.2.2 and 5.6.3.2.2. More detailed discussion and backup documentation is provided in Section 2.04 of the Technical Document.

The basis for offsets per the DSSR is volume or more specifically, the Resource Protection volume (RPv), that cannot be managed to the Maximum Extent Practicable (MEP) on any given site. The DSSR also allows for a fee reduction on a percentage-removal efficiency basis in instances where water quality treatment practices are provided. DNREC included a discussion of an “offset-trading” program in its Phase II Chesapeake Watershed Implementation Plan (WIP) dated March 30, 2012 which was intended to offset future nutrient loads.

General – Guidance has been provided to date for the Fee-in-lieu option only. However, the Fee-in-lieu option is based on one type of BMP, bioretention. Suggestions by RAC members have included adding stream restorations as another alternative. The Technical Document allows for six offset types which are proposed for consolidation to three Offset Options as follows:

Existing offset types	Proposed Offset Options
Fees-in-lieu	Fees-in-lieu
Trading	Trading (which may or may not include banking)
Banking	
Mitigation	Mitigation (including retrofitting previously unmanaged sites and construction of off-site management measures)
Retrofitting previously unmanaged sites	
Construction of off-site management measures	

In instances when the RPv requirements could not be met, developers would have a choice between providing water quality controls or providing a Fee-in-lieu for the nutrient load reduction shortfall. The shortfall would be in the form of credits, defined in the Chesapeake Bay TMDL as “a measured unit of nitrogen, phosphorous, or sediment reduction per unit of time at a location designated and standardized by the jurisdiction that can be generated, sold, or traded as part of an offset”.

Trading would allow a developer providing water quality treatment that reduces TN, TP, and TSS above the amount required to sell credits. Other developers could either provide onsite controls sufficient meet water quality requirements or purchase credits in a comparable quantity. Mitigation would enable a developer unable to meet water quality requirements to fund an offsite project that, through the inclusion of onsite controls, would provide the additional treatment. Mitigation would be similar to Trading except that a single entity would be both buyer and seller of the credits.

Specifics – Each Offset Option as proposed has three primary components: basis of the exchange, geographic application, and governance.

The basis for the Fees-in-lieu and Trading Options is proposed to be nutrient mass per time period. A dollar amount per credit would need to be developed for the Fees-in-lieu Option but not for Trading as the market would determine prices for credits bought and sold. The basis for Mitigation is proposed to be “equivalency” of impervious area treated.

Projects resulting from Fees-in-lieu would be constructed in the same jurisdiction as the fees were collected in. In order for credits to be accounted for properly for Trading and Mitigation Options, resulting projects would need to occur in the same watershed.

For all Offset Options, governance technical details will be needed. These include varying pollutant removal efficiencies of BMPs and the different forms or states that nitrogen and phosphorous can take in the environment. The potential need for “uncertainty ratios”, “retirement ratios”, or “delivery ratios” should be explored. See description of the working group below.

The Offset Options are summarized below:

<u>Option</u>	<u>Basis</u>	<u>Application</u>	<u>Governance Needs</u>
Fees-in-lieu	Nutrient mass per time period	Jurisdictional	<ul style="list-style-type: none"> • Agency or organization administering program • Management and collection of funds • Policies for expending funds • Prioritization and implementation
Trading	Nutrient mass per time period	Watershed-based	<ul style="list-style-type: none"> • “Bank” for deposits and withdrawals or exchange for trades • Verification that bought and sold credits are constructed and maintained as intended • Other considerations such as easements and monitoring
Mitigation	Equivalency	Watershed-based	<ul style="list-style-type: none"> • Verification that mitigated credits are constructed and maintained as intended • Other considerations such as easements and monitoring

Short Term (before June 15) – If concurrence is reached on the Offset Options, basis of the exchange, and geographic application, the definition of “Offset” in Section 2.0 of the DSSR will be changed to “Offset Options” and definitions for each Options along with component descriptions per to above table will be included in the DSSR and / or the Technical Document. The RAC will outline interim policies to be used until the programs can be finalized (see Longer Term).

Longer Term (after June 15) – DNREC will convene a working group of stakeholders including current RAC members if available to explore governance aspects. The group would oversee the re-evaluation of the Fees-in-lieu amount and gage the implications of lessening the fee for small or redevelopment sites. The group would determine whether trading would be conducted by a “bank” or a platform more like an exchange. Finally, the applicability of water quality opportunities not currently in the program such as nonpoint / point trading, stream restorations, septic elimination programs, and agricultural practices such as cover crops would be assessed. It is noted that options such as cover crops present time-based issues as they need to be re-funded and re-certified annually.

Interim Period (between Short Term and Longer Term) – DNREC will identify opportunities for leveraging other funds such as the Green Project Reserve from the State’s Clean Water State Revolving Fund (CWSRF) and incentivize the use of public-private partnerships (P3s) to maximize the effective use of funds collected through the Fees-in-lieu program. Other possibilities could include working jointly with Maryland or Pennsylvania. Maryland in particular has well-established programs but working across State lines could add complexity.