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H. B. 2581

(By Delegates Howell, Blair, Faircloth, R. Smith, Sponaugle,
Overington, A. Evans, Householder, Duke, Rowan and Espinosa)

[Introduced February 4, 2015; referred to the
Committee on Agriculture and Natural Resources then the Judiciary.]

A BILL to amend and reenact §22-11A-30 of the Code of West Virginia, 1931, as amended; and to amend code by adding thereto a new article, designated §22-11B-1, §22-11B-2, §22-11B-3, §22-11B-4, §22-11B-5, §22-11B-6, §22-11B-7, §22-11B-8, §22-11B-9, §22-11B-10, §22-11B-11, §22-11B-12 and §22-11B-13, all relating to the Chesapeake Bay watershed; requiring the West Virginia Department of Environmental Protection to establish a comprehensive nutrient reduction credit trading program.

Be it enacted by the Legislature of West Virginia:

That §22-11A-30 of the Code of West Virginia, 1931, as amended, be amended and reenacted, and that said code be amended by adding thereto a new article, designated §22-11B-1, §22-11B-2, §22-11B-3, §22-11B-4, §22-11B-5, §22-11B-6, §22-11B-7, §22-11B-8, §22-11B-9, §22-11B-10, §22-11B-11, §22-11B-12 and §22-11B-13, all to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11A-30. Chesapeake Bay Restoration Initiative.

(a) The Legislature finds and declares that:

1 (1) The Chesapeake Bay and its tributaries are valuable natural resources providing both
2 recreational and economic opportunities to citizens living in and around the Chesapeake Bay
3 watershed. Eight West Virginia counties, and a collective population of more than two hundred
4 thousand citizens, are within the Chesapeake Bay watershed. The protection and promotion of the
5 environmental health and integrity of the Chesapeake Bay is accordingly in the best interests of the
6 State of West Virginia.

7 (2) The Chesapeake Bay has been identified by the United States Environmental Protection
8 Agency as an impaired water due to excess nitrogen and phosphorous entering the bay from its
9 various tributaries. These pollutants, commonly referred to as nutrients, result in depleted dissolved
10 oxygen supplies and other factors which impact the overall health of the Chesapeake Bay and its
11 watershed.

12 (b) West Virginia is among six states from which nutrients flow into the Chesapeake Bay.
13 In order to restore the Chesapeake Bay, these states have agreed to reduce the amount of nutrients
14 contributed to the Chesapeake Bay by sources located within their respective jurisdictions.

15 (c) Among the sources of nutrients discharged into the Chesapeake Bay watershed are
16 wastewater discharged by West Virginia wastewater treatment facilities, storm water discharged
17 from various sources, wastewater discharged from agriculture related activities and other sources of
18 wastewater related to both natural and man-made impacts which are not specifically set forth herein.

19 (d) The need to provide and maintain affordable and high-quality public infrastructure
20 services and to safeguard existing industrial and agricultural sectors of the economy in the
21 Chesapeake Bay watershed are essential to the continued economic growth and quality of life of
22 West Virginia communities within the watershed. Protection of these communities' economic

1 vitality and the Chesapeake Bay are critical interests of the state. The capital costs of nutrient
2 removal processes, if borne by individual rate customers of sewer services or by individual business
3 owners, would result in significant increases in rates for an essential public service, deferral or
4 cancellation of other critical infrastructure extensions and/or improvements and act as a disincentive
5 for business growth, both commercial and agricultural, in these communities, if not the shrinking
6 of industrial and agricultural activity in the watershed. Therefore, a holistic program, while assuring
7 the protection of the Chesapeake Bay, must include: (1) A nutrient trading and off-set program to
8 allow for efficiencies within the watershed to assure that public moneys are placed to best use; and
9 (2) a capital improvement program to assist those required to install capital improvements to obtain
10 the reductions in nutrients previously agreed to by the state.

11 (e) The secretary, in consultation with affected stakeholders, is hereby directed to ~~establish~~
12 implement, no later than ~~June 1, 2011~~ July 1, 2015, a comprehensive program of nutrient trading and
13 off-sets, meeting the requirements of article 11B of this chapter. Pending establishment of such a
14 program, the secretary is authorized to consider and implement interim trading and offset programs
15 as necessary and appropriate for individual permittees in order to protect the Chesapeake Bay and
16 its tributaries.

17 (f) The secretary is hereby directed, no later than June 1, 2010, and in consultation with
18 affected stakeholders, to report to the Joint Legislative Commission on State Water Resources the
19 status of proposed performance standards necessary for wastewater treatment facilities in the
20 Chesapeake Bay watershed for any reduction of nutrients in the watershed required to protect water
21 quality in the Bay.

22 (g) The secretary and stakeholders shall, no later than June 1, 2010, consider and recommend

1 to the Legislature a program establishing a new and independent source of funding for capital
2 improvements for public facilities made necessary by the imposition of nutrient removal
3 requirements.

4 (h) Should it be determined based upon new information or the issuance of a final total
5 maximum daily load for the Chesapeake Bay that modifications to nutrient loading requirements
6 contained in West Virginia/National Pollutant Discharge Elimination System permits are necessary
7 to be consistent with this new information or the final total maximum daily load, the secretary shall
8 recalculate such loading requirements and modify such permits consistent with this information.

9 **ARTICLE 11B. CHESAPEAKE BAY WATERSHED NUTRIENT CREDIT EXCHANGE**

10 **PROGRAM.**

11 **§22-11B-1. Short Title.**

12 This article shall be known and may be cited as the "Chesapeake Bay Watershed Nutrient
13 Reduction and Credit Trading Act."

14 **§22-11B-2. Definitions.**

15 For the purposes of this article:

16 (a) "Aggregator" means a person that arranges for the sale of credits generated by another
17 person, or arranges for the credits to be certified, verified and registered.

18 (b) "Agricultural operation" means the management and use of farming resources for the
19 production of crops, livestock or poultry, or for equine activity.

20 (c) "Baseline " means:

21 (1) The compliance activities and performance standards that must be implemented to meet
22 current environmental laws and regulations related to the pollutant for which credits or offsets are

1 generated; and

2 (2) The term includes allocations established pursuant to this article, in a Total Maximum
3 Daily Load (TMDL) or in a similar allocation, for the pollutant.

4 (d) "Best management practice" means:

5 (1) Schedules of activities, prohibitions of practices, maintenance procedures and other
6 management practices to prevent or reduce pollutants to surface waters of the state.

7 (2) The term includes treatment requirements, operating procedures and practices to control
8 plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

9 (3) The term includes activities, facilities, measures, planning or procedures used to minimize
10 accelerated erosion and sedimentation and manage stormwater to protect, maintain, reclaim and
11 restore the quality of waters and the existing and designated uses of waters within this state before,
12 during and after earth disturbance activities.

13 (4) The term also includes riparian buffers, soil and slope stabilization measures, control of
14 fertilization practices, and other actions and measures designed to reduce erosion and runoff of soil,
15 sediment and pollutants from the land surface during precipitation events; or to reduce the
16 contamination of groundwater with pollutants that may affect surface waters.

17 (5) The term includes best management practice measures developed under this title to reduce
18 pollutant loading to surface waters.

19 (e) "Certification" means written approval by the department of a proposed pollutant
20 reduction activity to generate credits before the credits are verified and registered to be used to
21 comply with NPDES permit effluent limitations.

22 (f) "Credit" means the tradable unit of compliance that corresponds with a unit of reduction

1 of a pollutant as recognized by the department which, when certified, verified and registered, may
2 be used to comply with NPDES permit effluent limitations.

3 (g) "Credit reserve" means credits set aside by the department to address pollutant reduction
4 failures and uncertainty.

5 (h) "Department" means West Virginia Department of Environmental Protection.

6 (i) "Discharge monitoring report" means the department or EPA supplied forms for reporting
7 of self-monitoring results by the permittee.

8 (j) "Delivery ratio" means a ratio that compensates for the natural attenuation of a pollutant
9 as it travels in water before it reaches a defined compliance point.

10 (k) "Edge of segment ratio" mean a ratio that identifies the amount of a pollutant expected
11 to reach the surface waters at the boundary of a Chesapeake Bay Watershed Model segment through
12 surface runoff and groundwater flows from a pollutant source within a watershed segment.

13 (l) "NPDES" means the National Pollutant Discharge Elimination System.

14 (m) "Nutrient" means nitrogen or phosphorus.

15 (n) "Offset" means the pollutant load reduction measured in pounds that is created by an
16 action, activity or technology which when approved by the department may be used to comply with
17 National Pollutant Discharge Elimination System permit effluent limitations, conditions and
18 stipulations. The offset may only be used by the NPDES permittee that the department determines
19 is associated with the load reduction achieved by the action, activity or technology.

20 (o) "Person" means any industrial user, public or private corporation, institution, association,
21 firm or company organized or existing under the laws of this or any other state or country, State of
22 West Virginia; governmental agency, including federal facilities; political subdivision; county

1 commission; municipal corporation; industry; sanitary district; public service district; drainage
2 district; soil conservation district; watershed improvement district; partnership; trust; estate; person
3 or individual; group of persons or individuals acting individually or as a group; or any legal entity
4 whatever.

5 (p) "Pollutant" means a nutrient or sediment.

6 (q) "Pollutant reduction activity" means an activity, such as a best management practice or
7 effluent control, that is implemented to prevent or reduce a pollutant load to surface waters of the
8 state.

9 (r) "Registration" means accounting mechanism used by the department to track certified and
10 verified credits before they may be used to comply with NPDES permit effluent limitations.

11 (s) "Reserve ratio" means a ten percent ratio that is applied to the pollutant reductions
12 generated, which establishes the credits to be set aside for the department's credit reserve.

13 (t) "Secretary" means the Secretary of the West Virginia Department of Environmental
14 Protection or such other person to whom the secretary has delegated authority.

15 (u) "Total Maximum Daily Load" or "TMDL" has the meaning established by 40 CFR §CFR
16 § 130.2.

17 (v) "Threshold" means activities and performance standards beyond baseline compliance
18 which are required before credits may be certified.

19 (w) "Tradable load" means the amount of nonpoint source pollutant reduction determined
20 to be the projected future pollutant load that is the difference between the total reduction
21 theoretically possible from maximum implementation of pollutant reduction activities, and the
22 reduction associated with a level of pollutant reduction activities identified by the department as

1 reasonably attainable.

2 (x) "Trade" means a transaction that involves the sale or other exchange, through a
3 contractual agreement, of credits that have been certified, verified and registered.

4 (y) "Trading ratio" means a ratio applied to adjust a pollutant reduction when calculating
5 credits for a pollutant reduction activity. A trading ratio is used to address uncertainty, water quality,
6 reduction failures or other considerations. The term will include a delivery ratio, an edge of segment
7 ratio and a reserve ratio.

8 (z) "Verification" means an assurance that the verification plan contained in a certification,
9 permit or other approval issued by the department under this section has been implemented.
10 Verification is required prior to registration of the credits for use in an NPDES permit to comply
11 with NPDES permit effluent limitations.

12 **§22-11B-3. Chesapeake Bay Water Quality.**

13 (a) Credits and offsets may be used to meet legal requirements for restoration, protection and
14 maintenance of the water quality of the Chesapeake Bay.

15 (b) Credits may be generated only from a pollutant reduction activity that has been certified,
16 verified and registered under this section.

17 (c) Credits and offsets may be used by permittees to meet effluent limits for nitrogen,
18 phosphorus and sediment expressed as annual loads in pounds contained in NPDES permits that are
19 based on compliance with water quality standards established under the Federal Water Pollution
20 Control Act, 33 U.S.C.A. §§1251-1387), specifically for restoration, protection and maintenance of
21 the water quality of the Chesapeake Bay.

22 (d) Credits and offsets may only be used for comparable pollutants, unless otherwise

1 authorized by the department. For example, nitrogen credits or offsets may only be used to meet
2 nitrogen effluent limits.

3 (e) The use of credits and offsets must comply with legal requirements under applicable laws
4 and regulations, including the requirements of this section.

5 (f) Credits and offsets may not be used to comply with technology-based effluent limits,
6 except as expressly authorized under federal regulations administered by the United States
7 Environmental Protection Agency.

8 **§22-11B-4. Methodology.**

9 (a) The department will use one or more of the methods, data sources or conclusions
10 contained in this subsection when certifying a pollutant reduction activity to generate credits.

11 (b) Credits may be calculated by use of pollutant removal efficiencies for best management
12 practices, and edge of segment and delivery ratios addressing fate and transport of pollutants,
13 consistent with the most up-to-date version of the Chesapeake Bay watershed model. The pollutant
14 removal efficiencies and edge of segment and delivery ratios will be available on the department's
15 website.

16 (c) The department may rely on results from the following modeling tools, as amended or
17 updated, to approve other pollutant removal efficiencies for best management practices:

18 (1) Science Algorithms of the EPA Models-3 Community Multiscale Air Quality (CMAQ)
19 Modeling System, Atmospheric Modeling Division, National Research Laboratory, U.S.
20 Environmental Protection Agency, EPA/600/R-99/030, (Daewon Byun and Kenneth L. Schere,
21 2006).

22 (2) EPA Watershed Model (Donigian et al. 1994; Linker 1996; Linker et al. 2000).

- 1 (3) EPA Chesapeake Bay Hydrodynamic Model (Wang and Johnson 2000).
- 2 (4) EPA Estuarine Water Quality Model (Cerco and Cole 1993, 1995a, 1995b; Thomann et
3 al. 1994; Cerco and Meyers 2000; Cerco 2000; Cerco and Moore 2001; Cerco et al. 2002a).
- 4 (d) The department may rely on the methods, data sources and conclusions in the following
5 EPA documents, as amended or updated:
- 6 (1) Technical Support Document for Identification of Chesapeake Bay Designated Uses and
7 Attainability. EPA 903-R-03-004. Region III Chesapeake Bay Program Office, Annapolis, Maryland
8 (2003).
- 9 (2) Technical Support Document for Identification of Chesapeake Bay Designated Uses and
10 Attainability-2004 Addendum. EPA 903-R-04-006. Region III Chesapeake Bay Program Office,
11 Annapolis, Maryland (2004).
- 12 (3) Revision, Chesapeake Bay Program Analytical Segmentation Schemes: decisions and
13 rationales, 1983-2003. EPA 903-R-04-008. CBP/TRS 268/04. Chesapeake Bay Program Office,
14 Annapolis, Maryland (2004).
- 15 (4) Revision, Chesapeake Bay Program Analytical Segmentation Schemes: decisions and
16 rationales, 1983-2003-2005 Addendum. EPA 903-R-05-004. CBP/TRS 278/06. Chesapeake Bay
17 Program Office, Annapolis, Maryland (2005).
- 18 (5) Setting and allocating the Chesapeake Bay Basin Nutrient and Sediment Loads. The
19 Collaborative Process, Technical Tools and Innovative Approaches. EPA 903-R-03-007. Region III
20 Chesapeake Bay Program Office, Annapolis, Maryland (2006).
- 21 (6) Summary of Decisions Regarding Nutrient and Sediment Load Allocations and New
22 Submerged Aquatic Vegetation (SAV) Restoration Goals. April 25, 2003, Memorandum to the

1 Principals' Staff Committee members and representatives of the Chesapeake Bay headwater states.
2 Virginia Office of the Governor, Natural Resources Secretariat, Richmond, Virginia.

3 (7) The 2002 Chesapeake Bay Eutrophication Model. EPA 903-R-04-004. U.S. Army Corps
4 of Engineers, Engineer Research & Development Center, Environmental Laboratory (Cerco, C.F.,
5 and Noel, M.R., 2004).

6 (8) Ecosystem Models of the Chesapeake Bay Relating Nutrient Loadings, Environmental
7 Conditions and Living Resources Technical Report. Chesapeake Bay Program Office, Annapolis MD
8 (Kemp, M.W., R. Bartlescn, S. Blumenshine, J.D. Hagey, and W.R Boynlén, 2000).

9 (9) Ambient Water Quality Criteria for Dissolved Oxygen, Water Clarity and Chlorophyll
10 a for the Chesapeake Bay and Its Tidal Tributaries. U.S. EPA 2003b. EPA 903-R-03-002.
11 Chesapeake Bay Program Office, Annapolis, Maryland.

12 (e) For a point source, the department may rely on the information supplied by the permittee
13 in the Discharge Monitoring Report, including offset information, when certifying a pollutant
14 reduction activity to generate credits.

15 (f) When certifying a pollutant reduction activity to generate credits, the department may rely
16 on methods, data sources and conclusions contained in published, peer-reviewed scientific sources.

17 **§22-11B-5. Eligibility requirements.**

18 (a) To generate credits or offsets, the person shall demonstrate a reduction in the pollutant
19 load beyond the pollutant load allowed under applicable baseline requirements, and beyond any
20 applicable threshold.

21 (b) Baseline requirements to generate credits --.

22 (1) For a nonpoint source, the baseline is the set of requirements applicable to the source at

1 the location where the credits or offsets are generated, and the pollutant load associated with that
2 location as of July 1, 2015. If since that date, new requirements or operation changes have occurred
3 that necessitate a revised set of requirements, those requirements will establish the baseline. For an
4 agricultural operation, baseline includes compliance with requirements for agricultural operations
5 in hapter nineteen of this code, relating to erosion and sediment control, pollution control and
6 prevention, and nutrient management.

7 (2) For a point source, the baseline is the pollutant effluent load associated with effluent
8 limitations contained in the NPDES permit based on the applicable technology based requirements,
9 or the load in a TMDL or similar allocation, whichever is more stringent.

10 (c) Threshold requirements to generate credits --.

11 (1) To generate credits, an agricultural operation must meet one of the following threshold
12 requirements at the location where the credits are generated.

13 (A) Manure is not mechanically applied within 100 feet of a perennial or intermittent stream
14 with a defined bed or bank, a lake or a pond. This threshold can be met through one of the
15 following:

16 (i) There is not a perennial or intermittent stream with a defined bed or bank, a lake or a pond
17 on or within 100 feet of the agricultural operation.

18 (ii) The agricultural operation does not mechanically apply manure, and applies commercial
19 fertilizer at or below agronomic rates contained in the current Penn State University Agronomy
20 Guide published by Pennsylvania State University.

21 (B) A minimum of 35 feet of permanent vegetation is established and maintained between
22 the field and any perennial or intermittent stream with a defined bed or bank, a lake or a pond. The

1 area may be grazed or cropped under a specific management plan provided that permanent vegetation
2 is maintained at all times and there is no mechanical application of manure within the buffer area.

3 (C) The applicant applies an adjustment of at least twenty percent to the overall amount of
4 the pollutant reduction generated by the pollutant reduction activity the person is submitting for
5 certification.

6 (2) The department may establish other threshold requirements necessary to ensure the
7 effectiveness of the use of credits to meet legal requirements for restoration, protection and
8 maintenance of the water quality of the Chesapeake Bay.

9 (d) A person who by past or current noncompliance has demonstrated a lack of ability or
10 intention to comply with any of the following is not eligible for certification or offset approval or
11 to use credits or offsets to meet permit effluent limits:

12 (1) A department regulation, permit, schedule of compliance, order or certification.

13 (2) A law or regulation that addresses pollution of waters of the state.

14 (3) A contract for the exchange of credits.

15 (e) The department may establish other eligibility requirements to ensure the effectiveness
16 of the use of credits and offsets to meet legal requirements for restoration, protection and
17 maintenance of the water quality of the Chesapeake Bay.

18 (f) If at any time prior to registration of a credit the department determines that a person no
19 longer meets the eligibility requirements under this section, the department may take appropriate
20 action, such as prohibiting the person from participating in any trading under this section or denying
21 a request for certification, registration of any credits or approval of offsets.

22 **§22-11B-6. Certification requirements.**

1 (a) A pollutant reduction activity must be certified by the department for the generation of
2 credits before the credits may be applied to meet permit effluent limitations. Certification will serve
3 as the department's final determination of the amount of credits that the pollutant reduction activity
4 may generate. A permittee may only use credits to meet permit effluent limits if certification is
5 followed by verification and registration of the credits.

6 (b) A person who wishes to have a pollutant reduction activity certified by the department
7 to generate credits shall submit a written request for certification in the format required by the
8 department. The request for certification must contain information sufficient to demonstrate the
9 following:

10 (1) That the location where the pollutant reduction activity will be implemented will meet
11 applicable eligibility requirements of this article and will continue to meet those requirements
12 throughout the applicable term of the certification.

13 (2) That the pollutant reduction activity will meet acceptable standards for construction and
14 performance, including operation and maintenance, throughout the applicable term of the
15 certification.

16 (3) That the calculation requirements of this section have been met.

17 (4) That the implementation of the pollutant reduction activity will be verified as described
18 in a verification plan that meets the requirements of section 6 of this article.

19 (c) The request for certification must contain the following additional information:

20 (1) A detailed description of how the credits will be generated by the pollutant reduction
21 activity, including calculations, assumptions and photos.

22 (2) A map illustrating the locations of the proposed pollutant reduction activity.

1 (3) Details on the timing of credits, such as the timing of credit generation and delivery,
2 timing of a phase-in period and the time frame for sale and use of credits toward permit effluent
3 limits.

4 (4) The water quality classification under article eleven of this chapter, and any applicable
5 impairment listings under section 303(d) of the Federal Water Pollution Control Act (33 U.S.C.A.
6 § 1313(d)), for the receiving stream segment nearest the location of the proposed pollutant reduction
7 activity.

8 (5) Information on sources of funding used to pay for any portion of the pollutant reduction
9 activity, including the dollar amount and any conditions and restrictions regarding the use of the
10 funds toward the generation or sale of credits.

11 (6) A description of how risks of failure of the pollutant reduction activity will be managed,
12 such as the use of financial guarantee mechanisms, contractual arrangements, insurance products or
13 reduction of the concentration of projects in a particular sub-watershed.

14 (7) A description of preservation and conservation easements on lands where the pollutant
15 reduction activity is to be implemented.

16 (8) Identification of notations on documents submitted in the request which the person
17 submitting the request claims to be confidential business information or a protected trade secret
18 protected from disclosure by law, and a justification for the claims.

19 (9) The name of the person submitting the request and the names of the participants involved
20 in the pollutant reduction activity.

21 (10) The professional qualifications of the persons who completed the calculations,
22 conducted the baseline and threshold determinations or otherwise contributed to the technical merits

1 of the request.

2 (11) Contact information for the person submitting the request.

3 **§22-11B-7. Calculation of Credits.**

4 (a) The following credit calculation requirements apply:

5 (1) The calculations must demonstrate how the pollutant reductions will be achieved from
6 the proposed pollutant reduction activity to generate credits for the applicable period of time.

7 (2) The pollutant reductions must be expressed in pounds per year.

8 (3) The calculations used must be based on methodologies that the department determines
9 are appropriate under section four of this article.

10 (4) The calculation for a point source may include excess load capacity attributable to
11 activities such as effluent controls or the use of offsets.

12 (5)The calculation must include ten percent set aside for the department's credit reserve.

13 (6)The department may establish other calculation requirements necessary to ensure that the
14 use of credits is effective in meeting water quality requirements, and to address uncertainty for
15 reasons such as unforeseen events that may disrupt pollutant reduction activities. The calculation
16 requirements may include the need to use trading ratios, risk-spreading mechanisms and credit
17 reserves. These calculation requirements may reduce the amount of credits the department may
18 certify for a pollutant reduction activity.

19 (b) The annual sum of all credits certified from nonpoint sources in the state's portion of the
20 Chesapeake Bay Watershed may not exceed the applicable tradable load calculated by the
21 department for the state's portion of the Chesapeake Bay Watershed. The tradable load will be
22 available on the department's website.

1 (c) If state or federal funds are used to cost-share any portion of the pollutant reduction
2 activity contained in the request for certification, the department may allow the portion of the credits
3 or offsets paid for by state and federal funds to be available for certification, unless to restrict trading
4 of that portion of the credits restrictions have been placed on the funds by the provider of the funds.

5 (d) The department will not certify a request that includes a pollutant reduction activity
6 related to a farm land conversion action that includes the purchase and idling of a whole farm or a
7 substantial portion of a farm to provide credits for use offsite. The department will not certify a
8 request that includes a pollutant reduction activity related to a farm land conversion action that
9 includes farm land that is converted from agricultural land to another development type such as
10 commercial or residential. However, to support farm land conservation programs, if a portion of
11 farm land is retired or converted through a program such as one of the following, the action may be
12 eligible for certification:

13 (1) The United States Department of Agriculture's Farm Services Agency Conservation
14 Reserve Program (CRP).

15 (2) The United States Department of Agriculture's Conservation Reserve Enhanced Program
16 (CREP).

17 (3) The United States Department of Agriculture's Natural Resources and Conservation
18 Service's Environmental Quality Incentives Program (EQIP).

19 (e) A request for certification must contain a verification plan. The verification plan must
20 meet the following requirements:

21 (1) The verification plan must include the methods for credit verification, such as the
22 documentation of the implemented pollutant reduction activity, sufficient to allow the department

1 to verify that the pollutant reduction activity in the certification was properly implemented during
2 the applicable compliance period.

3 (2) The verification plan must also include one of the following methods. The method
4 contained in the verification plan is subject to approval by the department:

5 (A) Self-verification by the person responsible for implementing the pollutant reduction
6 activity.

7 (B) Third-party verification.

8 (f) The department will certify a pollutant reduction activity when it has determined that the
9 requirements of subsections (a) through (e) have been met. In addition, the following apply:

10 (1) The department may make a certification contingent on conditions to ensure that the
11 requirements of this article and the rules developed pursuant to this article will be satisfied.

12 (2) The department may only certify the pollutant reduction activity that will generate credits
13 for use to meet permit effluent limits for the compliance period for which they are certified, verified
14 and registered under this section.

15 (3) The department will only approve a request for certification for multiple compliance
16 periods if the pollutant reduction activity that will generate the credits will be verified and registered
17 separately for each compliance period.

18 (g) A person to whom the department issues a certification under this section shall comply
19 with the terms and conditions of the certification.

20 (h) The term of a certification is five years, unless the certification expressly states otherwise.
21 To obtain a certification term longer than five years, a person requesting certification shall
22 demonstrate to the department's satisfaction that a longer term is warranted based on technological

1 or economic factors, taking into consideration the requirements for restoration, protection and
2 maintenance of the water quality of the Chesapeake Bay.

3 (i) A person seeking renewal of a certification shall submit a written request for renewal at
4 least 180 days prior to the expiration of the certification.

5 (j) The department will provide public notice and an opportunity for informal comment when
6 an administratively complete request is submitted.

7 (k) The department's final determination on a request for renewal will be based on the
8 requirements of this section and on other applicable laws, water quality standards and requirements
9 in effect at the time of the department's determination.

10 (l) The department may revoke a certification for failure to comply with the conditions of the
11 certification.

12 **§22-11B-8. Verification requirements for the Chesapeake Bay.**

13 (a) Credits must be verified prior to registration. Verification must meet the following
14 requirements:

15 (1) Be conducted as described in the approved verification plan.

16 (2) Demonstrate that the pollutant reduction activity has been implemented as described in
17 the certification, and that other requirements, such as baseline and threshold, are met.

18 (b) The department may conduct other verification activities, such as monitoring and
19 conducting inspections and compliance audits, to ensure that the pollutant reduction obligations are
20 being met.

21 **§22-11B-9. Registration requirements for the Chesapeake Bay.**

22 (a) Credits must be registered by the department before they may be applied to a permit to

1 meet effluent limitations. The following registration requirements apply:

2 (1) Credits must be certified under the provisions of section five of this article.

3 (2) Credits must be addressed in a valid contract that ensures that the requirements of this
4 section will be met.

5 (3) Credits must be verified prior to registration, under section six of this article.

6 (b) The department will assign a registration number to each registered credit for reporting
7 and tracking purposes.

8 (c) The department will not register credits if the person who generates the credits has not
9 implemented, or demonstrates a lack of ability or intention to implement, operations and
10 maintenance requirements contained in the certification, verification plan, or other requirements of
11 this section. The department will not register credits submitted by an aggregator that is currently not
12 complying, or demonstrates a lack of ability or intention to comply, with this article.

13 **§22-11B-10. Use of credits and offsets to meet NPDES permit requirements related to the**
14 **Chesapeake Bay.**

15 (a) A permittee will only be authorized to use credits and offsets through the provisions of
16 its NPDES permit. The permit conditions will require appropriate terms, such as recordkeeping,
17 monitoring and tracking, and reporting in Discharge Monitoring Reports.

18 (b) Only credits and offsets generated from activities located within the Chesapeake Bay
19 Watershed may be used to meet NPDES permit requirements related to the Chesapeake Bay. Credits
20 generated in the Potomac basin may only be used in the basin, unless otherwise approved by the
21 department.

22 (c) A permittee shall ensure that the credits and offsets that the permittee applies to its permit

1 for compliance purposes are certified, verified and registered, under this section for the compliance
2 period in which they are used.

3 (d) The department may authorize a period of sixty days or less following the completion of
4 the annual compliance period in a NPDES permit, for a permittee to come into compliance through
5 the application of credits and offsets to the permit provided that the credits were registered and
6 offsets were approved for use during that compliance period.

7 (e) A permittee relying on credits to demonstrate compliance with its permit effluent
8 limitations, conditions and stipulations developed pursuant to this article shall attain and maintain
9 compliance with its permit. A permittee is responsible for enforcing the terms of its trade contract,
10 when needed to ensure compliance with its permit. The department may waive this requirement
11 where the pollutant reduction activity fails due to uncontrollable or unforeseeable circumstances such
12 as extreme weather conditions, and timely notice is provided to the department, if the following
13 apply:

14 (1) The failure is not due to negligence or willfulness on the part of the permittee.

15 (2) The department determines that replacement credits will be available.

16 (3) The department determines that the requirements for restoration, protection and
17 maintenance of the water quality of the Chesapeake Bay will be met due to the requirements of this
18 section, which may include the type of methodologies used when certifying credits, the existence of
19 an approved legal mechanism that is enforceable by the department, and the use of a credit reserve.

20 (f) A permittee shall document the use of credits and offsets in Discharge Monitoring Report
21 forms, which the permittee shall submit at the end of each compliance year or as otherwise provided
22 or required in the permit. Credits and offsets shall only be used to meet permit effluent limits for

1 the compliance period for which they are certified, verified and registered, or approved, by the
2 department under this section.

3 **§22-11B-11. Water quality and Total Maximum Daily Load.**

4 (a) Use of credits and offsets under this section will be allowed only where surface water
5 quality will be protected and maintained as required by applicable laws and rules, including
6 department rules developed pursuant to this article.

7 (b) Use of credits and offsets under this section must ensure that there is no net increase in
8 discharge of pollutants to the compliance point used for purposes of determining compliance with
9 the water quality standards established by the states of Pennsylvania, Maryland, and Virginia for
10 restoration, protection and maintenance of water quality of the Chesapeake Bay.

11 (c) Where a TMDL has been established for the watershed where the permitted activity is
12 located, the use of credits and offsets under this section will be consistent with the assumptions and
13 requirements upon which the TMDL is based.

14 (d) Use of credits and offsets under this section will comply with the antidegradation
15 requirements contained in department regulations.

16 **§22-11B-12. Public participation.**

17 The department will publish a notice in the State Register of the receipt of administratively
18 complete requests for certifications of a pollutant reduction activity to generate credits. The notice
19 will provide an opportunity for informal comments. The department will also publish notice in the
20 State Register of its final certification determination.

21 **§22-11B-13. Use of credits and offsets generally.**

22 Nothing in this section precludes the department from allowing the use of credits and offsets

- 1 to be used to meet permit limits other than those established for restoration, protection and
- 2 maintenance related to the water quality of the Chesapeake Bay.

NOTE: The purpose of this bill is to require the West Virginia Department of Environmental Protection to establish a comprehensive nutrient reduction credit trading program.

Article 11B is new, therefore it has been completely underscored.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.