

## MS4 WATER QUALITY TRADING SUCCESS FACTORS (5/18/16 REV.)

1. **MS4 Permit Schedule Impossibility** – 2014 MS4 permits (particularly due to IA Restoration schedule of 20% within 5 years) are widely acknowledged to be unachievable by traditional BMP credits.
2. **MS4 Use of Alternative Credits from Temporary Trading** – "Trading-in-time" is essential for implementing the MS4 permits (in the absence of the alternative of permit revisions to establish a realistically achievable schedule for using tradition BMP credits).
3. **Distinguished from Offset Trading (AfG)** – "Trading in time" during restoration program is relatively simple application of trading, i.e., a scheduling tool for environmental improvement; this is very different from, and should not be confused or commingled with, offsets for permanent new/expanded loads (AfG) for which additional requirements such as heightened local water quality restrictions may well be appropriate.
4. **Distinguished from Direct MS4 Cross-Sector Implementation** - The Stormwater Accounting Guidance already allows MS4s to implement practices across sectors through the use of alternative practices for permit compliance. We interpret that to apply when that the MS4 owns the practice. Direct implementation by the MS4 is permit compliance "restoration" effort and should not be considered "trading."
5. **MS4 Credit Demand Uncertainty** – Although Guidance proposes general restriction on alternative credit use from trading (50% of IA Restoration target), there remains uncertainty about MS4 demands: (a) Phase I MS4s (this cycle; but esp. next cycle); and (b) Phase II MS4s (next GP; not estimated in draft). For this reason, the ability to conduct exchanges should not have a forced end date.
6. **Immediate, Adequate Credit Supply Needed** – MS4s require an immediate, adequate credit supply to meet current permit deadlines, which are only 3 years away for most Phase I MS4s; policy and actual credit supply are needed ASAP to plan and execute programs.
7. **WWTP Capacity & Allocations** – There must be absolute protection of investment in local WWTP capacity and associated nutrient/TSS allocations (design capacity, comprehensive plans, zoning, platted subdivisions, tap commitments, economic development, financial plans, rates, and bonded debt repayment).
8. **No WWTP Permit Modifications** – Modifications as to WWTP allocations / permit limits to supply credits are major concern. Modifications are entirely unnecessary and inefficient; WWTP loads and credits are certified on / readily calculated from required Discharge Monitoring Reports. It would deter WWTP participation, especially to trading to other localities. Requirements on credit use should be set forth in statewide documents such as the Guidance or any Regulations. Credit "retirement" makes no sense in context of temporary WWTP-MS4 trading of credits measured and certified subject to enforcement.
9. **WWTP Credit Supply** – More information is needed prior to making any decisions on credit definition issue (i.e., potentially limiting WWTP-generated credit trading to performance fraction) to evaluate supply and demand (i.e., ability of WWTP credits to meet current and future needs of Phase I and Phase II MS4s in each of the 3 trading regions); in event flow fraction restrictions are reasonable for co-owned WWTP/MS4 scenario, flow fraction component should be tradable to other MS4s without their own adequate supply (e.g., MS4 owner does not own WWTP).
10. **Trading Mechanisms** – Looking beyond common ownership situations ("bubbles" with co-owned WWTP and MS4) to multi-party trade execution, Guidance should accommodate any type of contractual approach that meets environmental requirements (e.g., bilateral contracts or exchange pool structure).
11. **Local Water Quality** – MS4s support local water quality. The proper means of ensuring local water quality protection should be tailored to the nature of the trading activity. In the context of offsets for new

loads (AfG), criteria for a geographical hierarchy driving local improvements is generally appropriate because the new load is local and in most cases permanent. In the context of far field Bay-related “trading-in-time” by MS4s (i.e., advancing environmental improvement programs), temporary trading should be permissible throughout the trading region while the MS4 continues executing its local restoration efforts. .

**12. Existing Policies & Programs** – Trading-in-time as described above is consistent with and supported by EPA Policy, the Bay TMDL, and existing EPA-approved approaches in other States (esp. Virginia) that can be readily adapted here without "reinventing the wheel."

**13. Pilot Trades and Exchanges** – MDE has expressed an interest in seeing pilot trades commence. To encourage such progress, pilot trades accepted by MDE prior to regulations or rules being finalized will keep full credit even if the crediting mechanisms change.