



City of Harrisonburg, Virginia

Department of Planning & Community Development

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Building Inspections
Engineering
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MEMO

To: Local Engineers & Developers
From: Dan Rublee; City Engineer, VSMP Administrator
Date: July 18, 2019
Re: **Use of Nutrient Credit Purchases for VSMP Compliance**

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As you may know, the offsite water quality compliance options listed in the VSMP Regulations include restrictions for their use in impaired watersheds. The most commonly used of these offsite options is the purchase of nutrient credits from an approved credit bank. The other less common option is the provision of onsite BMPs on another property in the same watershed, developed by the same operator/developer, that have excess pollutant removals that are creditable to another project.

Section 69.C.2 of the Regulations states that offsite compliance options shall not be allowed “in contravention of local water quality-based limitations” that are established in a documented TMDL study for a given stream. The reason for this provision is to protect local water quality downstream of a discharge point, as most offsite compliance measures are established in another location within a watershed or in another watershed entirely.

You may also be aware that the VADEQ and the VA State Water Control Board (VSWCB) approved on 6/27/19 a new TMDL for Blacks Run and Cooks Creek in the City of Harrisonburg and Rockingham County. Blacks Run is a tributary stream to Cooks Creek. This TMDL establishes the Cooks Creek watershed as impaired for phosphorous and establishes wasteload allocations for both Cooks Creek and Blacks Run at levels below those established in the Chesapeake Bay TMDL. The TMDL has now been approved by the USEPA and is considered effective.

With the establishment of this new TMDL, the City will no longer allow the use of offsite compliance options, including nutrient credit purchases, for use in securing water quality compliance for development plans within the Blacks Run and Cooks Creek watersheds. Please note that these provisions will also be enforced for projects draining to the Mill Creek watershed, which has an effective TMDL for phosphorous impairments. (Only a small portion of the southeast part of the City drains into the Mill Creek watershed.) Overall, this will impact projects in over 90% of the area within the City limits.

However, we recognize that we have numerous already-approved plans, plus many in some stage of review, that have been or are being qualified for approval using nutrient credit purchases. It does not seem appropriate for us to simply draw a line in the sand and suddenly disallow credit purchases, essentially invalidating in an instant numerous previous plan approvals.

Accordingly, we have established a time schedule for submittals and permitting that will allow for a transition from allowing to disallowing the use of offsite compliance options (such as credit purchases) for VSMP plan compliance. Our schedule considers a short grace period for submittals (considering many plans might already be in the development stage assuming the allowed use of credit purchase) and the impending date (April 2020) for publication of the forthcoming Certification of Nonpoint Source Nutrient Credits regulations (9VAC25-900...), which is drafted to disallow the sale of credits in an impaired watershed unless the credit bank is upstream of the development project.

Following is our policy for implementing the restrictions on use of offsite compliance options based on the new Blacks Run & Cooks Creek TMDL, and for the Mill Creek watershed:

- **Plans for any project proposing nutrient credit purchase (or other offsite compliance option) for VSMP compliance submitted by September 5, 2019 will be processed and acceptable for permitting upon plan approval. In our system, this means submission of the complete comprehensive site plan and stormwater management plan, together with all fees, checklists, reports, etc., made after the prerequisite FIRE, TIA and PER reviews are completed.**
- **All unpermitted (as of yet) projects with plans approved using nutrient credit purchase (or other offsite compliance options) must receive their Notice of Coverage under the General VPDES Permit for Discharges of Stormwater from Construction Activities (CGP) by April 1, 2020 in order to continue to construction under the prior approved plan. After that, previously approved plans will require revisions to provide suitable onsite BMPs for meeting water quality requirements (see next bullet for exceptions).**
- **After April 1, 2020, use of offsite compliance options for VSMP compliance will continue to be allowed where the credit bank from which credits are purchased, or the offsite project having excess removal credits, is within the same TMDL watershed and upstream of where the project discharge reaches impaired waters. This provision will remain provided it is not negated under future DEQ regulations. FYI we are not aware of any approved credit banks at this time that are located within the Blacks Run or Cooks Creek watersheds.**

Please note that the City does not process CGP Registration Statements until plans are approved and all agreements and bonds are secured, and the nutrient credit purchase is made (not just reserved). So, one needs to be confident of moving to construction by or near April 1, 2020 if they plan to take advantage of this extended period for offsite compliance approval.

We feel the above policy is reasonable. It offers considerations to previous approvals and in-process plans to avoid making substantial impacts on planned projects that are moving towards permitting. If you have questions concerning the above measures, please feel free to contact the Engineering Division of Community Development.