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Maryland's Pollution Trading Rules Risk Backsliding on Progress to Clean up Chesapeake Bay, New Report Finds

The Maryland Department of the Environment (MDE) has proposed using markets to clean up the Chesapeake Bay, but the department's new nutrient pollution trading rules are bound to stall progress on Bay restoration while worsening water quality in local streams and communities, according to a new report by the Center for Progressive Reform and the Environmental Integrity Project.

The MDE rules released on December 8 propose to create a market in which cities, counties, and industrial plants that face high costs of reducing pollution can instead send money – through the purchase of credits – to farms or other facilities that can reduce pollution more cheaply.

The new report, [*Trading Away Clean Water Progress in Maryland*](#), notes that pollution trading has worked in some contexts, such as between power plants with smokestacks whose emissions can be monitored and controlled. But Maryland is now proposing a trading program involving pollution sources such as farm fields and parking lots, whose runoff is diffuse and difficult to measure, and this is different and riskier. It could undermine accountability for polluters and the enforceability of the Clean Water Act, which would harm Chesapeake Bay cleanup efforts.

"After decades of effort, we know what works in restoring the Bay – strong enforcement of requirements to create modern pollution control systems – and we know that these projects also protect local health, produce local jobs, and boost local economies," said Evan Isaacson, policy analyst at the Center for Progressive Reform and a report co-author. "Maryland's new regulations may end up trading away these benefits."

The report highlights three of the significant shortcomings in MDE's pollution trading rules.

- **The rules lack geographic restrictions that would prevent pollution "hot spots" in local communities and streams.** Maryland's new regulations divide the state into just three large trading zones. These three excessively large trading zones treat water pollution challenges in Baltimore City the same as those in Worcester County and the challenges in Prince George's County the same as those in Garrett County. These oversized and artificial trading boundaries also discourage investment in urban areas

through green infrastructure development and other stormwater management projects. This could cause "hot spots" not just of nutrient and sediment pollution, but also many other dangerous and toxic water pollutants common in urban watersheds and communities.

- **Loopholes will result from the trading of "paper credits" not backed by real pollution reductions.** Through the Bay Restoration Fund, Maryland taxpayers have funded wastewater treatment plant upgrades across the state. This has successfully reduced nutrient pollution in the Bay by millions of pounds every year and is the primary reason for improvements in the Bay's water quality. But MDE's proposed regulations will, in some cases, allow these past pollution reductions to be counted as future progress by granting new credits for sewage plants to trade without doing any new work to reduce pollution.
- **MDE's regulations do not fully account for uncertainty.** Low-cost nonpoint (runoff) pollution reduction projects – such as cover crops, stream buffers, and manure management programs – are supposed to be a major source of credits in a nutrient trading market. But research shows that real-world pollution reductions from these projects can be significantly less than expected. This is why most trading programs require a credit buyer to purchase credits for twice as much pollution as they plan to discharge, if they are buying nonpoint source credits.

"The flaws in MDE's pollution trading rules are deeply troubling," said Abel Russ, attorney at the Environmental Integrity Project and report co-author. "The agency needs to address these shortcomings to lower the risk of backsliding on Bay cleanup and water quality goals."

The report offers several recommendations to strengthen and reduce the risks the trading rules pose. These include:

- **Maryland's trading regions must be suitably small and firmly drawn to prevent pollution hot spots and other problems.** The rules must also prohibit trades that allow pollution credits to be bought from projects downstream in order to prevent taxpayer dollars from being wasted on pollution reductions that local communities will never see.
- **The trading rules should make clear that no credits may be generated without an additional and verifiable pollution reduction.** The rules must require that additional capital investments or operational improvements will be made to reduce pollution for each credit.
- **The rules should require that all trades take uncertainty into account.** Maryland's trading rules should be consistent with most other state trading programs in requiring a credit buyer, if they are buying credits from a source of runoff pollution, to purchase credits for twice as much pollution as they need to reduce. This two-to-one "uncertainty ratio" ensures that the uncertainty associated with pollution control projects is fully accounted for.

"Maryland's proposed trading rules must be revised to ensure that any new trading market

produces legitimate, additional, and verifiable pollution reductions,” concluded Isaacson. “We must not jeopardize our efforts to restore the Bay, promote investment in local restoration economies, and protect the health of local waters and communities. A trading program is supposed to supplement robust enforcement of our clean water laws, not replace it with a weaker system rife with risks.”

Trading Away Clean Water Progress in Maryland is available online at <http://www.progressivereform.org/chesbaynutrienttrading.cfm>.

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