
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 799 Session of
2017

INTRODUCED BY ALLOWAY, BARTOLOTTA AND RESCHENTHALER,
JUNE 23, 2017

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JUNE 23, 2017

AN ACT

1 Establishing the Pennsylvania Clean Water Procurement Program;
2 providing for powers and duties of the State Conservation
3 Commission; and establishing the Watershed Improvement Fund.

4 The General Assembly of the Commonwealth of Pennsylvania

5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Pennsylvania
8 Clean Water Procurement Program Act.

9 Section 2. Definitions.

10 The following words and phrases when used in this act shall
11 have the meanings given to them in this section unless the
12 context clearly indicates otherwise:

13 "Authority." The Pennsylvania Infrastructure Investment
14 Authority.

15 "BMP." Pennsylvania Stormwater Best Management Practices
16 Manual.

17 "Commission." The State Conservation Commission.

18 "Department." The Department of Environmental Protection of

1 the Commonwealth.

2 "Entity." An entity that generates and sells certified
3 nutrient credits.

4 "Fund." The Watershed Improvement Fund established under
5 section 5.

6 "Local environmental benefits." Environmental benefits that
7 can be directly measured and quantified or modeled, including,
8 but not limited to, carbon reductions, pathogens, nutrients and
9 sediment to local freshwater and drinking water resources.

10 "Nutrient pollutant." Nitrogen or phosphorous.

11 "Permittee." A municipality or public storm water authority
12 that discharges or releases a TMDL nutrient to surface or ground
13 waters of this Commonwealth. The term does not include a person
14 engaged in agricultural production as defined in section 3 of
15 the act of June 30, 1981 (P.L.128, No.43), known as the
16 Agricultural Area Security Law.

17 "Program." The Pennsylvania Clean Water Procurement Program
18 established under section 3.

19 "Request for proposal" or "RFP." A request for proposal
20 which defines contract terms, future delivery dates and
21 technical specifications issued by the authority in conjunction
22 with the department to procure verified TMDL nutrient credits
23 from a certified load reduction activity that meets the
24 requirements of any applicable offset program in force regarding
25 the Chesapeake Bay.

26 "Sediment." Soils or other erodible materials transported by
27 storm water as a product of erosion.

28 "TMDL." Total maximum daily load.

29 "TMDL nutrient pollutant." A nutrient pollutant that has
30 been identified as a cause of nonattainment of water quality

1 standards and for which a TMDL has been developed to set
2 allowable annual loading targets.

3 "Transfer payment." Payment required of each permittee under
4 section 4.

5 "Unmet nutrient pollutant TMDL." Total outstanding Federal
6 requirements going forward three years.

7 "Verified TMDL nutrient credit." A unit of TMDL nutrient
8 pollutant load reduction achieved through department
9 verification of a certified reduction activity based upon an
10 approved verification plan, including modeled BMP reductions
11 with approved uncertainty factors as defined by the United
12 States Environmental Protection Agency.

13 "Water year." The 12-month period beginning October 1 of
14 each calendar year.

15 Section 3. Pennsylvania Clean Water Procurement Program.

16 (a) Establishment.--The Pennsylvania Clean Water Procurement
17 Program is established and shall provide for the purchase of
18 verified TMDL nutrient credits from certified nutrient credit
19 generators through a competitive bidding process consistent with
20 62 Pa.C.S. Pt. I (relating to Commonwealth Procurement Code) and
21 any other competitive process determined to be appropriate by
22 the department and the commission.

23 (b) Powers and duties.--The commission shall administer the
24 program and take any action necessary to effectuate the purposes
25 of this act.

26 (c) Contracts with verified TMDL nutrient credit sellers.--

27 (1) The following shall apply:

28 (i) The commission shall, beginning with the water
29 year in which this subsection takes effect and the
30 following two water years, publish a notice of the unmet

1 nutrient pollutant TMDL requirements in the Pennsylvania
2 Bulletin.

3 (ii) No later than 60 days following publication of
4 the notice under subparagraph (i), the authority shall
5 issue, in consultation with the department, a request for
6 proposals from certified nutrient credit entities under
7 62 Pa.C.S. Pt. I for the supply of long-term verified
8 TMDL nutrient credits for future delivery in order to
9 fulfill the unmet Federal Chesapeake Bay TMDL parameter
10 requirement for those water years included in the notice.

11 (iii) An RFP under subparagraph (ii) shall be for a
12 minimum term of 10 years and shall allow sufficient time
13 for the delivery of verified reductions of TMDL
14 parameters consistent with the time frame necessary for
15 the permitting and development of public or private
16 credit generator facilities.

17 (2) Factors to be considered as part of the criteria for
18 evaluation of responses received to an RFP and the weighted
19 percentage to be applied to each factor shall be included by
20 the commission in temporary regulations published under
21 section 6 and in final regulations and shall include:

22 (i) Environmental and recreational benefits to this
23 Commonwealth and local communities resulting from the
24 TMDL nutrient pollutant reduction activities, including
25 verified and modeled green infrastructure benefits and
26 other TMDL parameter reductions to freshwater resources
27 of this Commonwealth and the applicable major watershed.

28 (ii) Additional criteria determined relevant by the
29 commission.

30 (3) The award granted for an RFP shall determine the

1 adjusted cost of verified TMDL nutrient credits less the
2 value of the local environmental benefit or green
3 infrastructure reductions.

4 (4) The authority will allocate the cost consistent with
5 the revenue source adopted under this act based on each
6 permittee's percentage of the total nutrient reduction
7 mandate sufficient to cover the cost of the program.

8 Section 4. Replacement of sector allocation with competitive
9 bidding program.

10 (a) General rule.--The department shall transfer the
11 nutrient reduction mandates of a permittee to a competitive
12 bidding program to enable all certified nutrient credit entities
13 that can generate verified TMDL nutrient credits to participate
14 in an RFP on a voluntary basis.

15 (b) Transfer payment.--In return for being absolved from the
16 TMDL nutrient reduction mandate, the aggregate number of
17 permittees shall pay into the program \$50,000,000 annually for
18 10 years subject to subsection (c).

19 (c) Payment amounts.--Payment amounts under subsection (b)
20 shall be adjusted annually based on the cost determination made
21 under section 3(c)(2) and (4) as published in the Pennsylvania
22 Bulletin.

23 (d) Payment in arrears.--Consistent with 62 Pa.C.S. Pt. I
24 (relating to Commonwealth Procurement Code), Federal policy
25 recommendations regarding the procurement of results in lieu of
26 funding solutions and any applicable State statute, payments to
27 entities will be made after the department has verified the
28 nutrient pollutant reductions. These verifications will be
29 performed monthly based upon required data submissions from
30 nutrient credit generators certified by the department.

1 (e) Certainty.--Upon transfer of the nutrient reduction
2 mandates under subsection (a), a permittee shall have no ongoing
3 liability for the mandated nutrient pollutant reductions.

4 (f) Risk factor reduction.--The department shall attempt to
5 reduce risk factors imbedded in legacy policy issues that cannot
6 be otherwise mitigated and do not represent environmental
7 backsliding by modifying policies consistent with the
8 requirements of private sector financing requirements.

9 (g) Offset.--Verified TMDL nutrient credits obtained under
10 subsection (a) shall be deemed by the department to satisfy
11 applicable wastewater and storm water TMDL nutrient pollutant
12 permitting requirements.

13 Section 5. Watershed Improvement Fund.

14 (a) Establishment.--The Watershed Improvement Fund is
15 established within the authority as a special fund.

16 (b) Deposits.--The following shall be deposited into the
17 fund:

18 (1) Any appropriation made to the fund.

19 (2) Transfer payments from permittees in accordance with
20 section 4.

21 (c) Use.--The following shall apply:

22 (1) Money in the fund shall be used by the commission
23 for the purchase of verified TMDL nutrient credits under
24 section 3.

25 (2) Winning bids will offer 20% of total nutrient
26 reduction allotment to be available for participation for 30
27 days by small sources that did not participate in the bidding
28 process so that a small producer who installs a BMP can
29 subscribe to sell their credits into this pool and receive
30 the winning bid price absent the need to participate in the

1 bidding process.

2 Section 6. Regulations.

3 The commission may promulgate regulations to carry out the
4 provisions of this act.

5 Section 7. Effective date.

6 This act shall take effect in 30 days.