
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2430 Session of
2015

INTRODUCED BY TALLMAN AND MOUL, OCTOBER 26, 2016

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
OCTOBER 26, 2016

AN ACT

1 Providing for the use of competitive markets for the reduction
2 of nutrient and sediment pollution in the waters of this
3 Commonwealth, for the use of marketable credits for the
4 reduction of nutrient and sediment water pollution, for a
5 request for proposal process to identify cost-effective
6 options for reducing nutrient and sediment pollution and for
7 the powers and duties of the Pennsylvania Infrastructure
8 Investment Authority.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Short title.

12 This act shall be known and may be cited as the Pennsylvania
13 Nutrient Credit Trading Act.

14 Section 2. Legislative findings; declaration of policy.

15 The General Assembly finds and declares that nutrient and
16 sediment pollution entering waters of this Commonwealth are a
17 danger to public health, aquatic life and the environment and
18 cause economic loss and irreparable harm to the public health,
19 safety and welfare. It is the purpose of this act to:

20 (1) Promote and expand the use of marketable nutrient
21 and sediment credits which can be bought and sold in markets

1 throughout this Commonwealth to lower the cost of complying
2 with the Federal Water Pollution Control Act (62 Stat. 1155,
3 33 U.S.C. § 1251 et seq.) and National Pollutant Discharge
4 Elimination System requirements.

5 (2) Establish a request for proposal process to
6 encourage the use of competitive markets to develop cost-
7 effective options by municipalities, public and private
8 entities and other parties required to reduce pollution under
9 Total Maximum Daily Load Plans and to implement the National
10 Pollutant Discharge Elimination System requirements.

11 (3) Establish a mechanism by which farms and businesses
12 in this Commonwealth can effectively participate in the
13 selling of nutrient and sediment reduction credits as a means
14 to help mitigate costs of compliance with State and regional
15 laws, requirements and regulations.

16 (4) Enable the Commonwealth to shift financing away from
17 practice-based metrics of success to actual performance-based
18 metrics.

19 (5) Authorize credits created under this act and
20 purchased by participating entities to be eligible for
21 funding under the Pennsylvania Infrastructure Investment
22 Authority and other State water infrastructure funding
23 programs.

24 (6) Direct the Pennsylvania Infrastructure Investment
25 Authority to develop the necessary policy, guidance and
26 regulations to establish trading of nutrient and sediment
27 credits for municipal separate storm sewer systems and the
28 interstate trading of nutrient and sediment credits that
29 could be eligible for use in this program.

30 (7) Enable this Commonwealth to facilitate and

1 incentivize private sector activity by providing the
2 framework, parameters and rules of engagement for long-term
3 trading of nutrient and sediment credits.

4 Section 3. Definitions.

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

8 "Board." The board of the Pennsylvania Infrastructure
9 Investment Authority.

10 "Department." The Department of Environmental Protection of
11 the Commonwealth.

12 "Family farms." Agricultural operations as defined in
13 section 1702-E of the act of March 4, 1971 (P.L.6, No.2), known
14 as the Tax Reform Code of 1971.

15 "Hydrologic unit code." A standardized sequence of numbers
16 or letters that identify a hydrological feature, including a
17 river, river reach, lake or area such as a drainage basin,
18 watershed or catchment.

19 "Interstate trading." Trades and sales of nutrient credits
20 by four-digit hydrologic unit codes across contiguous state
21 lines.

22 "River basins." The Lake Erie Basin and the Delaware,
23 Genesee, Ohio, Potomac, Susquehanna, Elk, Bush and Gunpowder
24 River Basins.

25 "Nutrients." Nitrogen or phosphorus.

26 "Nutrient and sediment reduction credit." An offset or
27 tradeable credit created pursuant to the provisions of 25 Pa.
28 Code Ch.96 (relating to water quality standards implementation).

29 "Participating entity." An enterprise, municipality, home
30 rule municipality or municipal authority required to reduce

1 nutrients and sediment under the provisions of a Total Maximum
2 Daily Load Plan required by the Federal Water Pollution Control
3 Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.) or to implement
4 the National Pollutant Discharge Elimination System requirements
5 to reduce pollution caused by nutrients or sediment. The term
6 includes other National Pollutant Discharge Elimination System
7 point source permittees.

8 "PennVEST." Pennsylvania Infrastructure Investment
9 Authority.

10 "Program." The Market-Based Nutrient and Sediment Reduction
11 Program established by this act.

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

14 Section 4. Market-Based Nutrient and Sediment Reduction Credit
15 Program.

16 (a) Establishment.--The Market-Based Nutrient and Sediment
17 Reduction Credit Program is established. PennVEST shall
18 establish a Market-Based Nutrient and Sediment Reduction Credit
19 Program to help participating entities develop the most cost-
20 effective options for complying with nutrient and sediment
21 reduction requirements under the Federal Water Pollution Control
22 Act (62 Stat. 1155, 33 U.S.C. § 1251 et seq.) and to implement
23 the National Pollutant Discharge Elimination System requirements
24 to control storm-water discharges from municipal separate storm
25 sewer systems in this Commonwealth.

26 (b) Credit certification.--

27 (1) The program shall include a system for the
28 certification, verification and registration of nutrient and
29 sediment reduction credits by PennVEST in cooperation with
30 the Environmental Protection Agency and the department. The

1 system shall be designed to help participating entities
2 purchase credits to meet their nitrogen and phosphorus
3 discharge limits for the compliance year and control storm-
4 water discharges from municipal separate storm sewer systems.
5 Participating entities include developers and other
6 operations, including public and private waste water
7 treatment plants and concentrated animal feeding operations,
8 that are required to implement the provisions of the
9 following:

10 (i) the Total Maximum Daily Load Plan required by
11 the Federal Water Pollution Control Act (62 Stat. 1155,
12 33 U.S.C. § 1251 et seq.); or

13 (ii) the National Pollutant Discharge Elimination
14 System requirements.

15 (2) In certification and verification of nutrient and
16 sediment reduction credits, the Commonwealth shall reserve no
17 more than 5% of credits to cover costs of certification and
18 administration.

19 (c) Credit markets.--As part of this program, PennVEST shall
20 help to establish a fair and open market for promoting the sale
21 and offering of nutrient and sediment reduction credits created
22 under the program through an appropriate competitive
23 mechanism. PennVEST shall establish a forward-looking nutrient
24 and sediment reduction credit auction to promote the trading of
25 credits.

26 (d) Consultation.--PennVEST shall consult with the
27 department, the Department of Agriculture, the State
28 Conservation Commission and local government associations in
29 developing the program.

30 (e) Compliance.--The program shall meet the requirements of

1 the act of June 22, 1937 (P.L.1987, No.394), known as The Clean
2 Streams Law, and all implementing regulations and policies,
3 including those for nutrient and sediment reduction credit
4 programs in 25 Pa, Code Ch. 96 (relating to water quality
5 standards implementation).

6 (f) Federal compliance.--The program developed shall meet
7 the requirements of the Federal Water Pollution Control Act (62
8 Stat. 1155, 33 U.S.C. § 1251 et seq.) and all implementing
9 regulations and policies, including those for nutrient and
10 sediment reduction credit programs.

11 Section 5. Request for proposal process

12 (a) Competitive and cost-effective option.--PennVEST shall
13 promulgate regulations requiring participating entities to issue
14 a request for proposal for using nutrient and sediment reduction
15 credits to implement all of their required nutrient and sediment
16 reductions under a Total Maximum Daily Load Plan required by the
17 Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. §
18 1251 et seq.) or to implement the National Pollutant Discharge
19 Elimination System requirements. The requests for proposals
20 shall be for a term of at least 10 years.

21 (b) Competitive proposals.--

22 (1) The applications received from a request for
23 proposal issued under this section may be for the eligible
24 portion of the nutrient and sediment urban storm-water load
25 reduction credits required to implement a Total Maximum Daily
26 Load Plan under the Federal Water Pollution Control Act (62
27 Stat. 1155, 33 U.S.C. § 1251 et seq.) or to implement the
28 National Pollutant Discharge Elimination System requirements
29 to control urban storm-water discharges from municipal
30 separate storm sewer systems.

1 (2) Municipal separate storm sewer system permittees may
2 enter into an agreement with other municipal separate storm
3 sewer system permittees within the same four-digit hydrologic
4 unit code to collectively meet the sum of waste load
5 allocations that may be established by a permit.

6 (c) Lowest cost option.--Except as provided in subsection
7 (d), a participating entity shall pick the lowest cost option
8 presented by the results of the request for proposal process and
9 the analysis of other options for complying with nutrient and
10 sediment reductions to meet the participating entity's
11 obligations under a Total Maximum Daily Load Plan and to
12 implement the National Pollutant Discharge Elimination System
13 requirements to control storm-water discharges from municipal
14 separate storm sewer systems.

15 (d) Rejection of lowest cost option.--If a participating
16 entity decides not to accept the lowest cost option presented by
17 the results of the request for proposal process in subsection
18 (c), an analysis justifying the decision may be submitted to
19 PennVEST within 30 days of the decision. The analysis shall
20 include, but not be limited to, economic and environmental
21 considerations that give a detailed explanation for the decision
22 not to accept the lower cost option.

23 (e) Family farm participation.--A participating entity
24 issuing a request for proposal under this section shall solicit
25 proposals from family farms and companies utilizing advanced
26 manure treatment technologies to reduce nutrient loading.

27 (f) Spatial limitation.--PennVEST, in consultation with the
28 department, the Environmental Protection Agency and contiguous
29 states, shall develop and promulgate regulations to approve
30 interstate trading of nutrient credits.

1 (g) Hydrologic unit limitation.--An application responding
2 to a request for proposal issued under this section shall be
3 within the same four-digit hydrologic unit code or in the
4 adjacent four-digit hydrologic unit code as the National
5 Pollutant Discharge Elimination System.

6 Section 6. Funding eligibility.

7 (a) Scope.--Credits created under this act and bought by
8 participating entities under the request for proposal process
9 outlined in section 5 shall be eligible for funding under
10 agricultural, conservation and water infrastructure funding
11 programs administered by the Commonwealth Financing Authority,
12 PennVEST and the department for nutrient and sediment reduction.

13 (b) Reimbursement.--Funding provided under this section
14 shall be on a reimbursement basis after the nutrient and
15 sediment reduction credit is verified by PennVEST.

16 (c) Match requirement.--Funding provided under this section
17 shall not exceed 75% of the cost of the nutrient and sediment
18 reduction credit purchased by a participating entity under this
19 act.

20 Section 7. Regulations.

21 (a) Promulgation.--The board shall promulgate regulations to
22 carry out the provisions of this act.

23 (b) Consideration of regulations.--The board shall consider
24 proposed regulations implementing the provisions of this act no
25 later than 60 days after the effective date of this section.

26 Section 8. Effective date.

27 This act shall take effect immediately.