

# Accounting For Growth



**Presentation to The Sustainable Growth  
Commission**

**November 8, 2012**

# Today's Presentation

- Changes from July Discussion Draft under consideration
- Schedule going forward
- Discussion and feedback

# SB 236 and AfG

- **Original Proposal**
  - develop both concurrently
- **Current thinking**
  - Separate Tier III from the rest of AfG
  - Comply with SB 236 by proposing regulations for Tier III offsets by the end of December 2012.
  - Use CY 2013 to continue public process of developing complete AfG regulations and trading regulations

# Separation - Advantages

- Allows time to resolve difficult issues about offsets and trading
  - Verification, certification, inspection, enforcement
  - Regulation of brokers and aggregators
- Allows time for Maryland to act after EPA issues guidance on offset and trading

# Separation - Disadvantages

- The volume of development and trades will be insufficient to test the concepts or to induce much of a market in trading
- Incentives for targeted development and redevelopment will be delayed
- Local governments will have to wait longer to take advantage of trading to lower the costs of meeting their WIP targets

# N, P and Sediment

- **Original proposal**
  - Offset N only
- **Current thinking**
  - Offset N and P

# Trigger for Applicability

- **Original proposal**
  - Change in land use
- **Current thinking**
  - Development activity
    - The alteration of land, or construction or alteration of a structure, that changes or intensifies the use of the land or increases the wastewater load; or
    - Any residential, commercial, industrial, or institutional construction or alteration that changes the runoff characteristics of a parcel of land.
    - Will exclude most agricultural activities.

# Applicability – *de minimis*

- **Original proposal**
  - Regulations would not require offsets if development disturbed less than 1 acre of land
- **Current thinking**
  - Appropriate *de minimis level*
    - 1 acre of disturbed land?
    - 5,000 square feet of disturbed land?
    - Other?

# The Load To Be Offset

- **Original proposal**
  - offset 100% of the post-development load
- **Current thinking**
  - offset 100% of the post-development load  
MINUS the forest load

# What To Offset

- **Original proposal**
  - wastewater
  - stormwater and
  - mobile atmospheric deposition
- **Current thinking**
  - wastewater and
  - stormwater

# When Offset Must Be in Place

- **Original proposal**
  - Before a permit for the discharge of stormwater associated with construction activity can be issued, all BMPs must be installed and generating reductions
- **Current thinking**
  - Before the post-development load begins, the BMPs must be installed and generating reductions
  - BMPs can be phased in to match construction schedule if guaranteed in a legally enforceable contract

# Permanency of Offsets

- **Original proposal**
  - Offsets must be permanent
  - O&M for offset must be guaranteed in perpetuity
  - Local jurisdiction could assume responsibility for O&M
- **Current thinking**
  - Offsets to last for a minimum of 30 years
  - Broker or Aggregator can guarantee the term with approval of MDE, with financial assurances

# Availability of Fee-in-Lieu

- **Original proposal**
  - No fee-in-lieu
- **Current thinking**
  - Fee-in-lieu available for N only
  - Payable to BRF
  - MDE to use the fee to fund reductions at least equal in pounds to the required offset
  - Follow priorities in BRF law

# On-site Wastewater System

- **Original proposal**
  - Use statewide average loading rates, EOS
  - assume a 50% reduction for BAT
- **Current thinking**
  - Use an area-specific loading rate based on 3 zones (80 % in CA, 50% within 1,000 feet of stream but not CA, 30% for all others)
  - Use actual field-verified BAT efficiency for approved systems

- **Original proposal**
  - Use statewide average loading rates
  - assign a 50% reduction for ESD to the MEP
- **Current thinking**
  - Use regional loading rates (Ag uses basin-specific loading rates; need to identify “regional”)
  - Use default of 50% reduction for ESD to the MEP
  - Recognize additional reduction if developer opts to demonstrate the use of more effective BMPs

# Exceptions for Redevelopment

- **Original proposal\***
  - Exempt from stormwater offset requirement redevelopment as defined in the Stormwater Management regulations
- **Current thinking\***
  - Exempt from stormwater offsets
    - Redevelopment, using a more expansive definition (drop 40% impervious)
    - Exempt infill in a PFA

\* No application to Tier III major residential subdivisions

# EOS vs. Delivered Load

- **Original proposal**
  - Intention was to use delivered load
  - Language was ambiguous
- **Current thinking**
  - Offset based on delivered load
  - Use Maryland land-river segment delivery factors from Chesapeake Bay Program

# Trading Geographies

- **Original proposal**
  - Development in TGRA could offset anywhere allowed by trading policies; all other development must offset within the county where development is located
- **Current thinking For Tier III**
  - Offset must be obtained in the same county where development is located
  - Where development is in P-impaired watershed, offset must be in same watershed
- **Current thinking For AfG**
  - To be determined

# Effective Date

- **Original proposal**
  - 12/31/2014 for AfG
- **Current thinking**
  - For Tier III regulations
    - Any major residential subdivision seeking coverage under a discharge permit for stormwater associated with construction, beginning one year after adoption of regulations
  - For AfG, to be determined

# No Change Recommended

- Implement through State General Permit
- Address revisions to trading policies in the future (while developing AfG policy and regulations)
- Give no credit for pre-development load
- All trades must comply with local TMDL
- No offset required for discharges to a WWTP that has capacity below its cap

# Schedule: AfG and Trading

By mid November	Post on MDE website an explanation of action on Tier III and plan to develop AfG
April to June 2013	Stakeholder meetings on AfG and the Trading Policies
August 2013	Propose regulations on AfG and Trading
December 31, 2013	Have AfG policy and regulations in place

# Discussion

