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December 15, 2011

Mrs. Pat Gleason
US EPA Region III
RE:COMMENTS ON EPA DRAFT REVIEWS OF STATE NUTRIENT
TRADING PROGRAMS

Dear Mrs. Gleason,

I appreciate the opportunity to comment on EPA's draft review of State Nutrient Trading Programs. Shenandoah Riverkeeper works exclusively in the Shenandoah Valley which remains within the borders of Virginia and West Virginia and therefore I will contain my comments to those two states, focusing on Virginia.

First, for the record, Shenandoah Riverkeeper does not support nutrient and sediment trading. However, it seems evident that trading will move forward and so I submit comments in hopes that the program can be modified to minimize the danger looming from this new and as yet, unproven scheme. But so that I feel better I'm going to mention my objection to trading to include the fact that it is not authorized under the Clean Water Act, that it resets the goal of the Clean Water Act to pollute rivers just shy of impairment levels replacing the original goal of zero pollution, the high likelihood that trading will create pollution hot-spots, despite the fact that these hot-spots will likely create social injustice as urban and under-represented areas receive more than their equitable share of pollution, despite the fact that when nutrients and sediment are traded many other pollutants of concern will inadvertently be traded that don't get accounted for, and despite the fact that States are no-where near prepared to evaluate trades on a stream by stream basis to protect water quality. Now I feel better.

By commenting hope to help shape EPA's view of trading so they insist state implement policies that anticipate issues and prevent further damage the Shenandoah River and its tributaries, one of the most impaired river systems in the Chesapeake Bay where Nitrogen, Phosphorous and Sediment are primarily to blame for its impairment.

Appendix S, number 6 of the Chesapeake Bay TMDL rightly places safeguards on trading. Appendix S 6(a) places a prohibition on trading as follows "prohibiting the use of offsets where such would cause or contribute to exceedances of WQS, TMDL's, WLA's or LA's in affected receiving waters, locally or elsewhere". The I've been griping for years about the Shenandoah River Systems extreme impairment due to excessive sediment and nutrients. I'm tired of watching rainfall events in the valley render the river un-swimmable and un-fishable much of the

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year due to extremely high turbidity from sediment movement. Much of the year (March through October) noxious algae flare up and create a widespread nuisance to fishermen, boaters and swimmers. Fishermen avoid the river during large parts of the year and paddlers often leave the river complaining of the extremely unsightly algae problems, and even of strong odors of sewage coming from the decay of undesirable algae. Yet despite years of complaints from citizens and the Riverkeeper, and despite significant efforts by Shenandoah Riverkeeper to encourage the Commonwealth to place the Shenandoah River on the 303D/305B list to recognize its eutrophication and sedimentation issues, Virginia has failed to respond. It appears the commonwealth will not recognize the river's impairment due to a lack of approved water quality standards. I focus on this problem, because the Commonwealth continues to point out that without standards they don't know how to determine whether or not the river is impaired, and they go further to say that the Commonwealth can't determine loss of use from eutrophication because it has no way of measuring.

So now we wind the tape forward to a time when significant trades are proposed under the TMDL. Virginia simply does not have the tools to determine whether or not a trade will cause or contribute to impairment of local receiving waters, and simply cannot satisfy the safeguards outlined in Appendix S. I don't believe I'm taking any liberties by asserting that in the absence of water quality standards for eutrophication and/or sediment then no trades can lawfully take place. DEQ staff recently admitted they didn't feel they had the tools to evaluate whether or not trades would cause impairment. Shenandoah Riverkeeper would consider challenging any trade that brought more nutrient or sediment pollution into the Shenandoah Valley.

The commonwealth might argue that it can evaluate streams using its narrative criteria as a way to provide safeguards for local waters. But for two reasons this should not be accepted. First, it would require that the stream become impaired in order for it to meet the narrative criteria for impaired, a clear violation of the clean water act and the spirit of the safeguards. Second, Virginia refuses to apply its narrative criteria for eutrophication as evidenced by their refusal to apply the criteria even though Shenandoah Riverkeeper spent significant effort showing the state how the Shenandoah River is impaired during the last 303D/305B list renewal.

In light of these issues, I believe it's logical to propose EPA require states to promulgate effective Water Quality Standards for both nutrients and sediment before any trades are made. Without taking this step, EPA would fail to implement the necessary safeguards to protect local waters from impairment.

Thank you for considering my comments.
Sincerely,

Jeff Kelble
Shenandoah Riverkeeper

P.S. Please require the states to adopt equitable criteria for trading.