

SUMMARY
Trading and Offsets Workgroup (TOWG)
Conference Call
December 19th, 2012
10:00 AM – 12:00 PM

<http://www.chesapeakebay.net/calendar/event/19062/>

Welcome and introductions

- Evan Branosky (World Resources Institute; Chair, TOWG) welcomed participants and convened the call shortly after 10:00AM.

Update on EPA technical memoranda

- Darrell Brown (EPA) described the status of the technical memoranda for nutrient trading and offset programs. He explained the general process to develop the twelve proposed technical memoranda. Below is a summary of the status of each memo.
 - Baseline demonstration memo: EPA has been working directly with PA, MD, and VA to ensure their approaches are consistent with the TMDL. Will begin work on the TM in 2013, and will be based largely on the state programs.
 - Sector growth and offsets demonstration: expect the draft will be ready for a wider audience at the end of December.
 - Trading ratios for uncertainty: met with a series of expert panels in November. Reviewing the internal draft; expect ready for public review in January.
 - Credit calculation methodologies: at same stage as the trading ratios memo.
 - Representative sampling: expect to share with jurisdictions soon; public review later this month.
 - Local water quality: have a draft that is still being reviewed internally; expect it will be ready for review later this month.
 - Interstate trading: recently spent time working on a white paper on this issue at the request of the Executive Council. TM will be developed next year.
 - Will begin working on another five TMs in 2013: net improvement offsets, additionality, credit permanence, MS4 and construction off-site verification and mitigation measures.
 - He noted the TOWG has expressed interest in reviewing and providing comments, especially on three of the topics (trading ratios for uncertainty, verification, and local water quality) so he will be sure the workgroup has an opportunity to review and comment.
 - He will also work to post the information and schedule online.
 - Branosky: How will they be distributed to the TOWG?
 - Brown: Suggest that Evan funnels the drafts to the workgroup for the three subjects the TOWG has expressed interest in; Evan can solicit and compile comments.
 - Others who are interested in other subjects (e.g. credit calculation) should contact Brown directly. Each TM will be distributed to the jurisdictions.
- Glynn Rountree (National Association of Homebuilders) noted that homebuilders are particularly interested to review and comment on MS4 and construction memoranda.

Update on trading lawsuit

- Bob Rose (EPA) explained the Department of Justice (DOJ) has filed to dismiss the lawsuit by Food & Water Watch and Friends of the Earth.
- Branosky noted that National Association of Clean Water Agencies (NACWA) has filed to intervene on behalf of EPA; both documents are available on the CBP calendar: view the DOJ's [motion to dismiss](#) and NACWA's [motion to intervene](#)
- Chris Day (EPA) described the three main arguments in DOJ's motion to dismiss:
 - The plaintiffs lack standing;
 - The plaintiffs failed to challenge a specific federal course of action;
 - Have failed to allege facts sufficient to establish a claim that is "ripe."
 - They expect a decision on the motion to dismiss around February.
- Day noted that in a separate motion, the National Association of Homebuilders and the American Farm Bureau have filed to intervene, in addition to NACWA and other clean water agencies.
 - Branosky: are those additional motions also available?
 - Day: Yes, those are both public documents.

PA Nutrient Credit Trading Program – Proposed Program Enhancements

- Veronica Kasi (PA DEP) described proposed enhancements to Pennsylvania's trading program.
 - For more details, view her [presentation](#)
- Kasi: PA has been meeting with a stakeholder group; latest meeting in November
 - Still holding internal discussions within DEP and with EPA; so the framework is subject to change
 - PA will base the changes on the EPA technical memoranda, so some aspects will depend on the release of those documents
- Russ Baxter (VA DEQ): what about facilities that are purchasing those credits? How will the 2015 adjustment affect them?
 - Kasi: In most cases, the credits are being purchased to cover the interim while the systems are upgraded. There is a sense there will be enough credits available.
- Kasi: Timeline to phase out manure hauling is still TBD, but do intend to phase it out as a practice that can generate nutrient credits
- Kasi: Currently, facilities treating under their design flow can sell credits, but starting in 2014, WWTPs will need to treat 8 mg/L TN and 1 mg/L TP before they can sell credits, and any treatment beyond those levels will be allowed to generate credits. In 2015, the treatment requirement will be 6 mg/L TN and 0.8 mg/L TP.
 - Branosky: Aren't cap load already set at those levels in the permits?
 - Kasi: Yes, but they are not treating up to their design flow since they were built to accommodate growth.
- Kasi: Based on feedback from stakeholders, DEP is looking at the current business process and the associated paperwork. They are considering options on how to enhance the process [slide 11].
 - She explained that stakeholders have requested some form of audit program.
 - She noted it is a slow process to develop new regulations, so the final publication is expected in May 2015.

- Rountree: Two questions. Insinuated that the credits being generated are for variable lengths of time, e.g. are not all for 30 years – is that correct? Second, are the credits generated under this program separate and distinct from credits under the accounting for new growth strategy?
 - Kasi: Expect sector growth will be a major source of demand for nutrient credits. In response to first question, verification is required annually, though the credit can be for longer period of time.
- Snell-Zarcone: Do you know how many credits have been generated by CAFOs this year, and are there any plans to phase out these credits this year or beyond?
 - Kasi: A number of CAFOs are registered to sell credits, though not sure how many of them have been selling verified credits. In response to second part of the question, have not heard the suggestion to phase out CAFO credits before. A decision on that issue will depend on the public discussion.
- Michael Helfrich (Lower Susquehanna Riverkeeper) clarified that some CAFOs have NPDES permits that designate them as zero-discharge facilities. So the issue is how can they generate credits if they are a zero-discharge facility?
 - Baxter: Some facilities have no-discharge permits; there are two different kinds of permits, though, and some have permitted discharges.
 - Snell-Zarcone: There's a lot of interest in this topic, perhaps the TOWG could discuss it in the future.
- Branosky: How will VA handle the CAFO issue?
 - Baxter: It's not part of the current rulemaking. Subject to regulatory approval, a CAFO would be eligible to purchase credits to meet a wasteload allocation.
- Helfrich asked how Olivia Devereux's analysis might apply to other states. He was curious how the choice of formulas may affect the on-the-ground reduction numbers.
 - Kasi: There may be some confusion between meeting TMDL goals, and the ability to trade, which are entirely different.
 - Baxter clarified that a trade does not change the reduction requirement, only the location at which the reduction occurs.
 - Snell-Zarcone: Think the hang up described by Helfrich is a concern that PA is not hitting its allocation in the agriculture sector, so trading credits from the ag-sector thus seems problematic.
 - Helfrich: That's right. Also, just curious if somebody has looked at Maryland the same way as Pennsylvania.
 - Olivia Devereux (Devereux Environmental Consulting): I believe this type of analysis is planned for the other jurisdictions.

Updates from the jurisdictions and members

- Virginia has begun the regulatory process and formed a Regulatory Assistance Panel (RAP) of stakeholders to assist the development. There is a webpage that provides all the relevant documents. The RAP will take a break while the General Assembly is in session. They are also evaluating the current trading ratio; expect to conclude that study in March. Interested in EPA's guidance on trading ratios.
- MD: Nobody present to comment. Branosky noted that Maryland has decided to postpone its final publication of its accounting for growth strategy until 2013.

- Baxter: We also asked for more time. It is a big issue, and will take time to work through something so complex and potentially controversial.
- PA: Internally reviewing the draft guidance for stormwater offsets. Hope to get feedback from the stakeholder group starting in late March.
- WV: No new updates. Still in early stages of sector growth demonstration.
- DC: Branosky noted the public comment period for their stormwater regulations is closed and they are working to revise them.
- DE: No representatives present to provide an update.
- NY: No new updates.
- Robert Nelson (University of Maryland) discussed the Environmental Policy Workshop, which comprised of masters degree students from the School of Public Policy. Nelson, a Professor at the School, oversaw the group project.
 - In summary, the report argues that offsets can play, and may need to play, a large role addressing uncertainties related to budgets, costs, equity and regulations, particularly in the stormwater sector.
 - Nelson mentioned that he is happy to respond to questions or comments on the report and welcomed feedback from TOWG members (nelsonr@umd.edu).
- Rountree felt very appreciative of the report and encouraged TOWG members to take a look at it.
 - Andra Popa (EPA, CBPO) asked Nelson about his professional background.
 - Nelson explained that he is an economist by training, and he currently teaches courses in the environmental policy specialization at the School of Public Policy.

Adjourned 11:45am

Participants

Name	Affiliation
Evan Branosky, Chair	WRI
Jeremy Hanson, Staff	Chesapeake Research Consortium, CBPO
Charles Abdalla	Penn State
Russ Baxter	VA DEQ
Alissa Berger	Penn Future
Allen Brockenbough	VA DEQ
Darrell Brown	EPA
Nicki Kasi	PA DEP
Olivia Devereux	Devereux Environmental Consulting
Michael Helfrich	Lower Susquehanna Riverkeeper
George Kelly	EBX
Teresa Koon	WV DEP
Beth McGee	CBF
Robert Nelson	UMD
Andra Popa	EPA, CBPO
Jeff Potent	EPA
Bob Rose	EPA
Glynn Rountree	National Assn. of Homebuilders
Nicole Rovner	The Nature Conservancy
Abel Russ	Environmental Integrity Project
Kevin Schneider	Greenvest
Ben Sears	NYS DEC
Ginny Snead	VA DCR
Kimberly Snell-Zarcone	Conservation Pennsylvania
Eric Sprague	Alliance for the Chesapeake Bay
Edwal Stone	MDE