

**SUMMARY**  
**Trading and Offsets Workgroup (TOWG)**  
**Conference Call**  
**Wednesday, July 17<sup>th</sup>, 2013, 10:00AM – 12:00PM**  
[www.chesapeakebay.net/calendar/event/19161/](http://www.chesapeakebay.net/calendar/event/19161/)

### **Introductions & Updates**

- David Foster (Chester River Association; TOWG Chair) welcomed participants and reviewed the day's [agenda](#).
  - He explained the presentation would serve as a preview of the forthcoming technical memorandum (TM) on protecting local water quality. David McGuigan and Darrell Brown would be seeking feedback, although the draft TM was not yet available.

### **Technical Memorandum on Protecting Local Water Quality**

- David McGuigan began by noting that trading programs would be implemented by the states through NPDES permit programs and would therefore need to comply with the Clean Water Act. Thus, trades would not be allowed to contribute to, or cause impairments.
  - View his [presentation](#) for more details.
  - In response to a question, McGuigan explained WQBEL stands for Water Quality Based Effluent Limit.
  - He reviewed some examples of relative location between buyers and sellers.
- Case 1: local waters not impaired, no local TMDL.
  - McGuigan: Reasonable potential analysis requires numerical criteria. Bay states do not currently have numerical criteria, but they could perhaps interpret their narrative criteria using the numeric criteria that EPA has suggested.
  - Foster: how are upstream and downstream defined for tidal waters?
    - McGuigan: Good question. Will need to give more thought to this.
- Case 2: Local water listed as impaired, but no TMDL
  - McGuigan: In this case we want to ensure there are no additional loads to the impaired body before a TMDL is developed.
  - Bevin Buchheister (Chesapeake Bay Commission): so in this scenario, an existing source is getting re-permitted.
  - McGuigan: below the historic discharge level, they would be able to go outside of local waters.
  - Michael Helfrich (Lower Susquehanna Riverkeeper): but any new source would have to be offset within the local watershed anyway. So any new source should not increase from historic load levels.
    - McGuigan: That's true going forward. However if the assessment was done in 1995, for example, then there may have been new sources added while there was no offset requirement.
  - McGuigan: We have generally been in an environment where loads have been in decline, due largely to point source upgrades. It's likely that local TMDLs are going to be more stringent than the Bay TMDL.

- Ron Entringer (NY DEC): It might limit NPS flexibility. There's going to be NPS reductions too. The local TMDL may put some constraints on trades. Everything is still evolving and there is no established way of doing this yet.
- Frye: Yes the point source upgrades, but do not expect that a new source would be allowed to discharge
- McGuigan:
- Tom Simpson (Water Stewardship): To clarify, when we say "pre-TMDL," are we talking about design flow or current flow?
  - McGuigan: The actual physical load at that point in time. This may be poor nomenclature. "Pre-TMDL" means time of the assessment. It does not refer to the 2010 Bay TMDL.
- Case 3: Local TMDL
  - McGuigan: In this case, if the local WQBEL is more restrictive, then credits are restricted to local waters. If the Bay TMDL is more restrictive, then credits are locally restricted to meet the bay TMDL; beyond that they are not restricted.
    - McGuigan, in response to question from Tom Simpson: if we put too many restrictions, then it would be prohibitive to the program itself. However, we do want assurances that local water quality is protected. It's an attempt to say that these are the things that EPA and the permit writer should consider when it reviews NPDES permits submitted by the states.
  - Helfrich described a situation on the Susquehanna where a power plant is purchasing credits from about 150 miles upstream. There is concern about this affect on local water quality.
    - Entringer pointed out the Watershed Model is based on annual averages. Local water quality is much more complex than that in real life.
    - Helfrich: perhaps large sources should be considered individually, case-by-case.
      - McGuigan noted these permits go out for public comment. The permit writer would need to be considerate of the factors under discussion.
- Associated pollutants
  - McGuigan noted that none of examples considered associated pollutants. Many urban streams are impaired for other pollutants, e.g. pathogens, metals, etc.
    - He asked for the workgroup's thoughts and comments on this difficult issue.
- EPA oversight
  - Entringer: what's the timing on this and how does it relate to what we've described in the WIP? NY does not see nitrogen as an issue for its freshwater streams. Phosphorous is the bigger concern and is more complex. Also curious why local water quality seems to be emphasized more in the Chesapeake Bay watershed than other the rest of the country. a question
    - McGuigan: One issue is the size of the watershed. That's one difference from other areas that have trading programs.
  - Darrell Brown (EPA): We've sent the draft of this technical memo to the jurisdictions on July 10<sup>th</sup> and asked for comments by August 2<sup>nd</sup>. Will distribute

- to TOWG after that. We have three TMs out for feedback right now. Very complex and we are seeing a lot of comments asking how each TM relates to other issues and TMs. Early on we decided to go TM
- Brockenbrough: any chance for extension on jurisdictions' reviews?
    - McGuigan: It's more important to get it right rather than meet the deadline. Let me know if you expect you need more time to provide comments.
  - Brown: If the TOWG members have additional input based on the presentation, please share them. Same for components of credit calculation TM.
  - **ACTION:** Additional feedback based on the presentations for the credit calculation or local water quality TMs should be directed to Darrell Brown ([brown.darrell@epa.gov](mailto:brown.darrell@epa.gov)).
  - Buchheister: we're working on the offsets policy in Maryland. Is this another layer of EPA oversight? Should we align our trading and offsets policies with this?
    - McGuigan: This is really focused on the NPDES permitting programs. The state-specific offsets go above and beyond those programs.
  - Marya Levelev (MDE): what is EPA's thinking on non-permitted load allocations and trades between nonpoint sources that do not have WLAs associated with them.
    - McGuigan felt these general principals are applicable to nonpoint-to-nonpoint trades, but noted EPA's authority and oversight is restricted to NPDES permits.

## Updates

- Allan Brockenbrough (VA DEQ): We've integrated stormwater permitting staff from Department of Conservation and Recreation (DCR) into the Department of Environmental Quality (DEQ).
  - Buchheister: who in Virginia certifies nonpoint source credits?
    - Brockenbrough: DEQ. At this point all certified credits have been land conversions except for one stormwater BMP. The recent consolidation bill merged authority to the Water Control Board at DEQ. We would certify the credits, but we could potentially rely on DCR, Soil Conservation Districts, or a third party to perform verification. We've only had land conversions so far, which have been pretty straightforward to verify.
- Buchheister: Maryland is working on its offset policy. One meeting left, scheduled for later this week. There is a question about how to ensure the practice or offset is maintained into perpetuity.
- Dan Baldwin (Maryland Department of Planning): the recommendations from the Accounting for Growth workgroup will be presented to MDE, who will consider them as it develops the offset policy.
- Baldwin noted the Bay Program is developing a new Bay Agreement with a goal for the states to sign the new agreement later in 2013.
  - Jeremy Hanson (CRC, CBPO) noted there is a page on the Bay Program site with more details: <http://www.chesapeakebay.net/chesapeakebaywatershedagreement/>

- Brockenbrough: For new development and redevelopment in Virginia we have regulations that control the post-construction phosphorous runoff rate. That rate basically offsets itself. You can trade to meet a portion of that to meet the rate. For redevelopment, think it's a 15% reduction. Determined that if phosphorous controls are installed, then nitrogen is also sufficiently controlled. The runoff rate is an average of all land uses in Virginia.
- Frye: When a developer applies various BMPs to the site, there is a tool that tells them if they achieve the runoff rate. So they can either install enough BMPs to meet the rate or buy sufficient credits from a bank.
  - Brockenbrough noted they are required to buy a permanent offset, which is why there has only been land conversions and one stormwater pond.
- Brockenbrough: Virginia did not have a reserve allocation set aside for growth in the TMDL. We're well under the waste load allocations with all the upgrades.
- Brian Schlauderaff (PA DEP): we are developing our offset program in Pennsylvania.
  - Foster: what happens for time limits in PA?
    - Schlauderaff: Nothing official has been determined yet for offsets. For trading, it's on an annual basis.
- Baldwin noted there is a website for the Accounting for Growth workgroup:
  - [http://www.mde.state.md.us/programs/Water/TMDL/TMDLImplementation/Page/s/Accounting\\_For\\_Growth.aspx](http://www.mde.state.md.us/programs/Water/TMDL/TMDLImplementation/Page/s/Accounting_For_Growth.aspx)
  - Brown explained there was tentative agreement by the workgroup to recommend a reassessment period for the fee-in-lieu amount every 3 years.
  - Simpson: where does the fee-in-lieu money go?
    - Baldwin: If the counties do not have capacity they could defer it to the state. They have the right of first refusal.
- Foster encouraged participants to suggest future agenda or discussion topics.
- **ACTION:** TOWG members or interested parties are encouraged to submit ideas for future agenda topics to David Foster ([riverkeeper@chesterriverassociation.org](mailto:riverkeeper@chesterriverassociation.org)) and Jeremy Hanson ([jhanson@chesapeakebay.net](mailto:jhanson@chesapeakebay.net)). This is an ongoing request.

## **Adjourned**

### **Next conference call:**

Wednesday, August 21<sup>st</sup>, 2013

10:00AM to 12:00PM

[www.chesapeakebay.net/calendar/event/19163/](http://www.chesapeakebay.net/calendar/event/19163/)

## Participants

<u>Name</u>	<u>Affiliation</u>
David Foster (Chair)	Chester River Association
Pat Gleason (Coord.)	EPA Region III
Jeremy Hanson (Staff)	Chesapeake Research Consortium
Dan Baldwin	MDP
Allen Brockenbough	VA DEQ
Chris Brosch	Va. Tech/ VA DCR
Darrell Brown	EPA
Bevin Buchheister	Chesapeake Bay Commission
Kim Childe	PA DEP
Ron Entringer	NYDEC
Jack Frye	Chesapeake Bay Commission
Chris Hartley	USDA, OEM
Teresa Koon	WV DEP
Marya Levelev	MDE
Joe Maroon	Maroon Consulting
David McGuigan	EPA Region 3
Betsy Nicholas	Waterkeepers Chesapeake
Rick Parrish	Southern Environmental Center
Susan Payne	MDA
Chris Pomeroy	AquaLaw
Andra Popa	EPA, CBPO
Jacob Powell	VA Conservation Network
Rebecca Roose	EPA
Glynn Rountree	National Association of Homebuilders
Brian Schlauderaff	PA DEP
Kevin Schneider	Greenvest
Tom Simpson	Water Stewardship
Ginny Snead	VA DEQ
Kimberly Snell-Zarcone	Conservation Pennsylvania
Tom Thornton	MDE
Melinda Tomaino	Associated General Contractors