

**SUMMARY**  
**Trading and Offsets Workgroup (TOWG)**  
**Conference Call**  
**Wednesday, January 15<sup>th</sup>, 2014, 10:00AM-12:00PM**  
[www.chesapeakebay.net/calendar/event/21187/](http://www.chesapeakebay.net/calendar/event/21187/)

**Welcome and introduction**

- David Foster (TOWG Chair) convened the call and reviewed the [agenda](#). Jeremy Hanson (CRC; TOWG Staff) verified participants.

**Litigation update**

- Chris Day (EPA) gave a litigation update. Food and Water Watch complaint against EPA was updated in October 2013. They alleged EPA exceeded Clean Water Act authority, among other things. On December 13<sup>th</sup> the court dismissed the suit. The court found the plaintiffs lacked standing to challenge the provisions that support trading/offsets under the TMDL and the Clean Water Act. The court recognized that there could be final actions or permits that may be challenged, but determined there was no basis for continuing the lawsuit. The plaintiffs have 60 days to appeal. There were a number of interveners on the side of EPA. Day asked for questions from participants.
- Foster: Where would we access the decision?
  - Day: Will provide to Jeremy. May also be available through DC district court.
  - The decision is posted to the calendar entry:  
[http://www.chesapeakebay.net/channel\\_files/21187/food\\_water\\_watch\\_decision\\_bay\\_trading\\_12\\_13\\_13.pdf](http://www.chesapeakebay.net/channel_files/21187/food_water_watch_decision_bay_trading_12_13_13.pdf)
- Chris Pomeroy noted that this is the second case in a row that ruled on trading in a positive manner.
- Foster: developments on Farm Bureau lawsuit?
  - Day noted that any motion to appeal is due January 27<sup>th</sup>. They have filed a notice of appeal. It appears they are focusing on two legal authority issues on the TMDL with specific allocations and to issue TMDL to upstream sources.

**Update on TM development**

- Bob Rose (EPA): We are getting close to the uncertainty technical memorandum (TM) being ready for a final internal review draft from EPA. That will likely be the next TM released to the states and the TOWG for feedback. Other than other outstanding TMs, do not expect other TMs to be released imminently.
- Pat Gleason (EPA): Perhaps in 30 days we will have a final local water quality TM as well. Hope to release the representative sampling TM to TOWG in next couple weeks, following this morning's presentation.
- Allan Brockenbrough (VA DEQ): is there a single webpage with the final TMs or status of ones in draft?
  - All final TMs are available on EPA's Chesapeake Bay TMDL page here:  
<http://www.epa.gov/reg3wapd/tmdl/ChesapeakeBay/EnsuringResults.html>
    - Click "Trading and Offset Programs" tab
    - Below that, click "Bay Trading and Offset Activities" tab
    - Scroll down page.

## Representative Sampling TM

- Pat Gleason introduced Olivia Devereux (Devereux Environmental Consulting) who presented on the representative sampling TM. Gleason noted that success relies on reliable representative sampling.
- Devereux explained it is important that the loads are measured accurately. She described sources of potential error and how to address them. There is variability, plus unknown conditions. Increasing sampling frequency can help reduce that variability. She explained the methods to develop an approach for representative sampling, as described in the TM.
  - View [the presentation](#) for more details.
- Gleason noted the slides are just the summary information and the detailed info will also be in the TM.
  - Allan Brockenbrough: what about smaller facilities that may not have capacity to do such frequent sampling?
    - Gleason: We were not assessing the financial obligation to plants of different sizes.
  - David McGuigan (EPA): we did consider composite samples that could lower the cost.
    - John DeFriece (DE DNREC): that would be preferential option for smaller facilities.
- Devereux: The big facilities are generally doing this analysis on a daily basis. They recognize it is in their interest.
- Pomeroy: Would expect to see variability for flow reasons alone. If we capture the flow properly in the formula, then the real issue seems to be the variability in concentration, if any.
- Marya Levelev (MDE): any recommendations for sampling with trades involving nonpoint sources?
  - McGuigan clarified the TM is only about point sources here, since we are not sampling nonpoint sources.
  - Rose: In terms of calculating credits, that is discussed in the credit calculation TM.
  - Brockenbrough suggested checking three things. Evaluate on annual load basis. Look not only degree of error, but whether there is bias. Also consider what is reasonable for affordability for small facilities and the frequency to determine accuracy in meeting TMDL.

### Teleconference participants

<u>Name</u>	<u>Affiliation</u>
David Foster (Chair)	Phoenix Initiatives
John Rhoderick (Vice-Chair)	MDA
Pat Gleason (Coordinator)	EPA Region III
Jeremy Hanson (Staff)	Chesapeake Research Consortium
Rashid Ahmed	PA DEP
Bill Angstadt	DE/MD Agribusiness Association
Dominic Bassani	Bion
Russ Baxter	VA DEQ
Robert Boos	PENNVEST
Evan Branosky	DDOE
Allen Brockenbrough	VA DEQ
Kevin DeBell	EPA, CBPO
Olivia Devereux	Devereux Environmental Consulting
Paul Emmart	MDE
Alex Foraste	WEG
Nicholai Francis-Lau	MDE
Ridge Hall	Chesapeake Legal Alliance, Inc.
Nicki Kasi	PA DEP
Marya Levelev	MDE
Joe Maroon	Maroon Consulting
David McGuigan	EPA Region III
Kip Mumaw	Ecosystem Services, LLC
Betsy Nicholas	Waterkeepers Chesapeake
Jeff Noland	
Rick Parrish	Southern Environmental Law Center
Susan Payne	MDA
Bob Rose	EPA
Rebecca Roose	EPA
Abel Russ	Environmental Integrity Project
Ginny Snead	Louis Berger
Kim Snell-Zarcone	Conservation Pennsylvania
Melinda Tomaino	Associated General Contractors
Jen Walls	DE DNREC