

SUMMARY
Trading and Offsets Workgroup (TOWG)
Conference Call
Wednesday, November 20th, 2013, 10:00AM – 12:00PM
www.chesapeakebay.net/calendar/event/19166/

Introductions & Updates

- David Foster (Phoenix Initiatives; TOWG Chair) convened the call and reviewed the [agenda](#).
- Jeremy Hanson (Chesapeake Research Consortium, Chesapeake Bay Program Office) verified participants.

Update on TM development schedule

- Bob Rose (EPA) mentioned EPA was working to update agreement with USDA in support of water quality trading. Have worked out the agreement and it has been signed. There will be a press release on December 2nd. The agreement is just between the two federal agencies. There will be a joint workshop hosted under the agreement. Also working on a joint tool from both agencies to help walk states interested in their own trading programs.
 - Rose gave an update on the Food & Water Watch suit against trading in the Bay. EPA and Department of Justice have motioned to dismiss the suit. There was a modification to the complaint, which reset the process and we have once again motioned to dismiss.
- Darrell Brown (EPA, CBPO) described the status and schedule of the technical memoranda (TMs). [View the schedule for more information](#).
 - Brown: Still working with the three primary states on baseline demonstration memo. Have internal draft for verification measures TM. We have received feedback from headquarters and USDA on credit permanence memo. After they are shared for feedback from the states, they will be made available to the TOWG.

Workgroup discussion of Local Water Quality Technical Memorandum

- Foster noted that the issue of Local Water Quality (LWQ) appears to generate the most debate and controversy among local watershed groups. He introduced Pat Gleason and David McGuigan from EPA Region 3.
- Pat Gleason (TOWG Coordinator) recalled that David McGuigan had presented on this memorandum in July, though the document was not available at that time. She noted comments from TOWG members were due by Friday, November 22nd.
- David McGuigan noted the TM had to tie in to the existing regulatory structure. He explained the logic and approaches in the memorandum and asked for comments or observations from the participants.
 - [View the draft memorandum](#) for more details.
- Kim Snell-Zarcone (Conservation Pennsylvania): the assumption in the TM is that the permitting process happens first, or in conjunction with the trading process. This would make sense in some cases, but in Pennsylvania, facilities were unable to meet their allocations because of weather events. So some of those review process assumptions may not work.

- McGuigan: We're asking the permit writer to look at historical discharges at time of permit and ensure that the total balance for that local water body would not exceed those levels.
 - Snell-Zarcone: Is this something that will have to be addressed in every permit, or only ones where trades are expected to be utilized?
 - McGuigan: We don't want the documentation process to be overly burdensome either. We need to sit down and discuss how to implement these in a way that makes sense for the permit writer.
- Foster had a question about location. Upstream and downstream have different meaning in tidal areas.
 - McGuigan: We did not want to be too specific on the issue. For example, Blue Plains. Have local TMDL constraints for phosphorous, and it is a tidal area. The location relationship will be driven by the specific context and water quality conditions for the trade. We wanted to provide some flexibility.
 - Foster suggested including an example to recognize or explain the difference between tidal and nontidal streams
- Ridge Hall (Chesapeake Legal Alliance): There have been concerns where the person generating the credit is downstream from the permittee (purchaser). There could be risk of nonattainment in that upstream portion. Perhaps there could be a preference that credits should be generated upstream, unless there is a clear demonstration that the reverse does not cause any impairment.
 - McGuigan: Constraint is how to make those decisions in real life, when the permit is developed. Difficult to make that decision on a trade-by-trade basis. We are suggesting that, by looking at historical data in a nonimpaired area, continued discharge at those levels should not create an impairment.
- Allen Brockenbrough (VA DEQ): Will we see a second draft of this TM, or have a meeting with the jurisdictions about its implementation before the TM is finalized?
 - McGuigan: The next version will be final. Then the next conversation will be how it is implemented in a permitting process.
- Brockenbrough: Virginia provided some comments. We have been struggling with how to extend some of the provisions to free-flowing streams. To extend some of the provisions from the guidance to those areas may be presumptuous. We may not have the necessary tools, just narrative criteria.
 - McGuigan: We feel certain the approach we are taking is conservative.
- Brockenbrough: If we have a locally impaired water, then it is much easier than when we do not.
 - McGuigan: It will be driven largely by locally impaired waters. Other than that, there is not much of a constraint. As discussed earlier, protection of local water quality is a sort of third rail and addressing that concern is critical for legitimacy.
- George Van Houtven (RTI) recalled that the presentation in the summer included some graphs and illustrations, which were excluded from the document. Was decision made that this is directed strictly to permit writers, not a broader audience?
 - McGuigan: We have learned that the longer these documents are, the more difficult they are to develop and it can be difficult to expound on those illustrations.

- Brockenbrough: Some of the illustrations could be extremely useful to clarify the narrative.
- McGuigan thanked the participants for their questions and input.

Workgroup discussion of Components of Credit Calculation Technical Memorandum

- Darrell Brown: We presented this to the TOWG in June and we have received a number of comments from the jurisdictions. We did include some additional considerations on certification and other topics. Also seeking comments from the workgroup by this Friday.
 - [View the draft memorandum](#) for more details.
- Marya Levelev (MDE): On page 12, the TM indicates that jurisdictions should report all BMPs for the annual progress run and indicate which were certified to generate credits and those that were not sold. What's the reason for indicating what is sold or not sold?
 - Brown: It is important to document where the credit was used for accounting purposes. We felt it would be interesting to know when BMPs were not sold to help understand the market.
 - Levelev: Is there an existing platform to provide this information, or a way to provide this through existing systems? Do not think that NEIEN currently have these fields or features.
 - Susan Payne (MDA) noted the registry will show which credits have been sold or where, so that information could be translated to other databases or tools.
 - Olivia Devereux (Devereux Environmental Consulting): there is not currently a field in NEIEN, but this can be done, NEIEN has not been modified yet.
 - Pat Buckley (PA DEP): have a question about EPA concern about crediting the traded BMP towards a sector goal. Curious why EPA has a sector evaluation, when the states are not held to sector allocations under their WIPs, it is whether the states meet their overall target.
 - Brown: We want to make sure there is not double-counting of the practice toward both the sector goal and the permitted load.
 - Buckley also felt concerned about extra effort to translate data from the trading registry to NEIEN.
 - Devereux: seems the issue is also about double-counting. We do not want to count it in the sector that generated the credit if we also credit it in the purchasing sector.
 - Robert Wieland (NYS DEC): If we are sector blind, then it is not an issue.
 - James Davis-Martin (VA DEQ): to clarify, the BMP is reported and credited in the progress run. Unsold credits would count toward reductions.
 - Brown: Yes.
 - Levelev: If the targets are sector blind, then it would not matter. Maybe this is something the WQGIT could look at and make a recommendation on how to handle it. Recommend that another workgroup such as the Watershed Technical Workgroup could look at tracking the trades for annual progress reporting.
 - Brown: The marketplace conditions would determine when and across what sectors the trades would occur.
 - Levelev: For the progress run we are looking at overall reductions, based on my understanding.
 - Buckley concurred.

- Hall: Choose Clean Water Coalition had a question about practices that were installed or implemented previously, for example before the establishment of the trading program. This arose in a discussion of additionality. Do you allow someone who installed practices in 2006 or 2007 (i.e. post-Watershed Model calibration) to generate and sell credits for that practice?
 - Brown: We have had discussions about cut-off times. We have not settled on a date, but it would be logical to have it relate that practice to the model calibration cut off in some way. It may be that the best practitioners who installed practices early on are out of luck and the new practitioners would be the ones who could sell credits.
 - Hall: Right to bring up the equity issue. It is a question that EPA should provide some guidance on. If a farmer was progressive and installed something early on before the trading program, and the BMP meets all other criteria for baseline, etc., perhaps they deserve something.
 - Payne: We had very discussions on this issue among our advisory panel members in Maryland. We decided that in terms of additionality, it would be too difficult to sort out. The BMP could count towards their baseline, but they could not use it to generate credits.
 - Brockenbrough: Virginia also had discussion on this. We have a practice-based baseline. For land conversions we have a requirement that it needed to be installed on or after July 1, 2005. That way we have a static date regardless of when the Watershed Model gets recalibrated.
 - Ginny Snead (Louis Berger Group): For stormwater BMPs we have a slightly different date. Anything installed prior to 2009 can not generate credits.
 - Foster: It would be useful to have some date-certain or static dates in the guidance, but we should also encourage and reward innovation.
 - Nicki Kasi (PA DEP): Pennsylvania is also considering a static date. Looking at 2006 calibration cut off. Would emphasize Foster's point about new technologies. If they are doing something new and they are able to prove they are making reductions, would want them to be able to generate credits.
 - Snell-Zarcone: Disagree. Think it is critical for the Bay Program BMP review process to play out before credits can be given.
 - Payne: Maryland has three different categories: BMPs that are CBP approved, ones that are pending integration into the Bay Model, and a third category for new and innovative technologies. There are other issues here, not just the time lag for the expert panels. For example, Maryland's platform is based on APEX model.
 - Dominic Bassani (Bion Environmental Technologies, Inc.): In our case, although our technology has yet to go through the expert panel process, our reductions are calculated through actual data, similar to wastewater treatment plants. The reductions are not modeled.
 - Brown: the BMP review process is a partnership process that was adopted a few years back. If there are new innovative BMPs out there, we can get them into the system following an expert panel review.
 - Bassani: An expert panel should differentiate between modeled practices and ones based on actual data.

- Jeremy Hanson (CRC, CBPO) noted the CBPO has a new cooperative agreement with Virginia Tech that will provide additional resources for BMP expert panels over the next several years.
- Brown: We seem to agree that it may be better to have a fixed point in time. We'll take those points into consideration.
- Wieland: surprised by statement in the draft memo about eligible parties.
 - Brown: We wanted to keep the market as open as possible, though there are some operational constraints, and not restrict it from EPA's perspective.
- Foster felt the additionality section was very well written.
- Foster thanked participants for their time and discussion.

Adjourned

Participants

<u>Name</u>	<u>Affiliation</u>
David Foster (Chair)	Phoenix Initiatives
Pat Gleason (Coord.)	EPA Region 3
Jeremy Hanson (Staff)	CRC, CBPO
Bill Angstadt	DE/MD Agribusiness Association
Dominic Bassani	Bion Environmental Technologies, Inc.
Robert Boos	PENNVEST
Allan Brockenbrough	VA DEQ
Bevin Buchheister	Chesapeake Bay Commission
Pat Buckley	PA DEP
James Davis-Martin	VA DEQ
Kevin DeBell	EPA, CBPO
Olivia Devereux	Devereux Environmental Consulting
Paul Emmart	MDE
Alex Foraste	WEG
Ridge Hall	Chesapeake Legal Alliance
Nicki Kasi	PA DEP
Teresa Koon	WV DEP
Marya Levelev	MDE
Kip Mumaw	Ecosystem Services
George Onyullo	DDOE
Rick Parrish	Southern Environmental Law Center
Nikki Rovner	The Nature Conservancy
Kevin Schneider	GreenVest
Ginny Snead	Louis Berger Group
Kim Snell-Zarcone	Conservation Pennsylvania
Eric Sprague	Alliance for the Chesapeake Bay
George Van Houtven	RTI International
Robert Wieland	NYS DEC