

# **Strawman COG Policy Position on Nutrient Trading and Offsets under the Bay TMDL**

*(draft for WRTC consideration, 11/7/12)*

## **Background**

The COG region's local governments and utilities will continue to work to implement controls and manage future growth over the coming decades in order to address the Chesapeake Bay TMDL, other local TMDLs, as well as MS4 permit requirements. Addressing trading and offset issues will likely become important mechanisms for how the metropolitan Washington region can apply adaptive management to manage future growth.

## **Chesapeake Bay TMDL – Section 10. Implementation and Adaptive Management**

- Subsection 10.1.2 Offset Programs (page 10-1)
- Subsection 10.2 Water Quality Trading (page 10-3)

[http://www.epa.gov/reg3wapd/pdf/pdf\\_chesbay/FinalBayTMDL/CBayFinalTMDLSection10\\_final.pdf](http://www.epa.gov/reg3wapd/pdf/pdf_chesbay/FinalBayTMDL/CBayFinalTMDLSection10_final.pdf)

These sub-sections outline EPA's support for the Bay jurisdictions developing or implementing water quality trading programs – within certain constraints. Those constraints are further defined in two reference documents cited within the TMDL (i.e., EPA's trading policy, and a trading toolkit).

## **Main Principles** *(i.e., points beyond current EPA/Bay trading guidelines)*

- 1) Support for the concept of nutrient trading as a way to more cost effectively meet Bay TMDL target reductions.
- 2) Support for having individual state trading programs at the river basin level (rather than trying to rely on one overall EPA-sponsored interstate trading program).
- 3) Support for trading programs that operate across all sources of pollution: wastewater, septic systems, agriculture, regulated and unregulated urban, new development.
- 4) Support for state-by-state decisions on individual program details, such as verification procedures and certification processes, but these should be based on some minimum Bay-wide criteria adopted by the Bay Program, such as for trading ratios.
- 5) Support for the principle that trading cannot lead to further degradation of local water quality.

## **Details**

- 1) The cost and supply of credits should meet some type of affordability threshold. For example, the proposed Maryland "Accounting for Growth" strategy has a fee in lieu option that those in need of nutrient offset credits can use instead of having to obtain through trading. The price set by this fee in lieu will effectively set a ceiling for the cost of tradable offsets.
- 2) States should develop procedures to ensure that credit purchasers can satisfy long-term obligations and not be held liable should a credit generator default on his commitment. As an example, the Maryland trading program envisions that third party credit brokers will be the ones who carry the risk of defaults or changing circumstances among credit generators.
- 3) Wastewater and stormwater permits should be issued with language that would allow trading to occur under appropriate circumstances (for example, you cannot use trading credits to address wasteload allocations for local TMDLs).

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## **Nutrient Trading Background Notes**

### **Maryland:**

- Current policy allows trades among wastewater plants and has developed a process by which agriculture can generate nutrient credits. Proposed “Accounting for Growth” strategy envisions that developers could buy such credits to offset new loads. However, the state has not developed a policy that would allow MS4 permit jurisdictions to use trading to help meet Chesapeake Bay TMDL wasteload allocations.
- The state currently limits trades to potential buyers and sellers within the Potomac River basin, the Patuxent River basin, or everywhere else.
- Several trades among wastewater plants have occurred. Only two other sources (both farms in the Potomac River basin) have certified credits available for sale totaling about 9,500 pounds/year of nitrogen and 2,600 pounds/year of phosphorus. No trades have occurred yet.

### **Virginia:**

- Current policy allows trades among wastewater plants and between wastewater and agriculture. The policy also allows developers to buy credits to offset new development loads and has developed a process by which agriculture can generate nutrient credits. Legislation passed in 2012 will allow both permitted and unregulated stormwater sources to use trading to meet TMDL Load and wasteload allocations; DCR is currently working on the regulations to administer this process.
- Trades must stay within major river basins (except for the state’s Eastern Shore).
- A number of trades among wastewater plants have occurred. A number of nonpoint sources have had credits approved for sale; nineteen development projects have purchased such credits to help them meet their stormwater permit requirements.

### **District of Columbia:**

- As noted in their Phase II WIP document, the District is working to address issues that EPA noted regarding their offset and/or trading program by the end of CY 2013.
- In addition, the Center for Watershed Protection (a local nonprofit organization) is working to assist DDOE, among other tasks, to create a public market in stormwater credit trading.
- Due to the Interjurisdictional nature and shared capacity at the Blue Plains WWTP (which is operated by DC Water), there may be a need in the future to allow/address nutrient trading related to that facility to address capacity and load allocation matters between the District and jurisdictions/agencies in Maryland and/or Virginia.

## **Potential Litigation**

- Two environmental organizations, the Friends of the Earth and Food & Water Watch, filed suit against EPA in October 2012, seeking to invalidate authorization for water pollution trading mechanisms that was included in the Chesapeake Bay TMDL. Given the widespread scope of the Bay TMDL, this controversial litigation has the potential to render existing state trading programs virtually meaningless – if it is upheld.