

DRAFT COG Policy Position on Nutrient Trading and Offsets under the Bay TMDL

Nutrient trading and offset issues will likely become important mechanisms for how the metropolitan Washington region can apply adaptive management to manage future growth. Therefore COG takes the following position on nutrient trading and offsets:

Main Principles of Trading

- 1) **COST EFFECTIVE** —Support for the concept of nutrient trading as a way to more cost effectively meet Bay TMDL target reductions, as documented by the Chesapeake Bay Commission report, “Nutrient Credit Trading for the Chesapeake Bay.”
 - 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) **WITHIN STATE**¹—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). States should have flexibility to determine program details, such as verification procedures and certification processes.
 - 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) **CROSS-SECTOR** — Support for trading programs that operate across all sources of pollution: wastewater, septic systems, agriculture, regulated and unregulated urban, new development.
 - The Chesapeake Bay Commission report documents significant cost savings if trading programs involve all the major sources of pollution.
- 4) **MEET BAY-WIDE TRADING CRITERIA**—Support for the concept that trading platforms should be based on some minimum Bay-wide criteria adopted by the Bay Program, such as for trading ratios.
- 5) **PRESERVE LOCAL WATER QUALITY**—Support for the principle that trading cannot result in further degradation of local water quality.
 - 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).

Background Information

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

¹ An exception to this would be DC Water and the District of Columbia, given the interstate nature of Blue Plains and the fact that EPA Region III has oversight over the District’s permits.

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).

Existing Trading Policies in the COG Region

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 its 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 the District's Department of the Environment to create a public market in stormwater credit trading.
- Due to the inter-jurisdictional nature of and shared capacity at the Blue Plains WWTP (which is operated by DC Water), there may be a need in the future to allow nutrient trading related to that facility to address capacity and load allocation matters between the District and local governments and utilities in Maryland and 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 invalidate existing state trading programs.