

Minutes from Nutrient Trading TAC meeting of September 19, 2005

The meeting was held at the Piedmont Regional Office (PRO), located at 4949-A Cox Road in Glen Allen. The meeting commenced at 9:30 with introductions by Dr. Ellen Gilinsky, Director of DEQ's Water Quality Division, and split into one of four workgroups to discuss issues pertaining to the regulation and its implementation. Minutes from these workgroup sessions follow the attendance list:

<u>Workgroup</u>	<u>Attendee</u>	<u>Affiliation</u>
Water Quality Improvement Fund:		
	Alan Pollock	DEQ
	Stuart Wilson	DCR
	Jeff Corbin	Chesapeake Bay Foundation
	Missy Neff	VALCV
	Joe Tannery	Chesapeake Bay Foundation
Point Source/NPS Trading:		
	Ellen Gilinsky	DEQ
	Rick Linker	DEQ
	Jack Frye	DCR
	Bob Koroncai	EPA
	Ricky Rash	VASWCD
	Paul Howard	Culpeper County
	Bill Street	James River Association
	Paul Bukaveckas	VCU
	Wilmer Stoneman	VA Farm Bureau
	Kurt Stephenson	Va. Tech
	Clifford Randall	Va. Tech
	Cy Jones	Ch2M-Hill
	David Faulkner	NRCS
	Sharon Conner	H-C SWCD
	Ken Carter	NRCS
	Dave Evans	McGuireWoods
	Scott Reed	EarthSource
	Rob Burgholzer	Chesapeake Bay Program (by phone)
Permit Structure:		
	Keith Fowler	DEQ
	Alison Thompson	DEQ
	Kyle Winter	DEQ
	Jud White	Dominion
	Rick Parrish	Southern Environmental Law Center
	Chris Pomeroy	AquaLaw/VAMWA
	Tom Roberts	Smurfit-Stone
	Tony Nobinger	Philip Morris
	John Martin	Citizen (Albemarle County)
	Steve Talley	Canaan Valley Institute
Schedule of Compliance:		
	Allan Brockenbrough	DEQ
	Glenn Harvey	Alexandria Sanitary Authority
	Tom Faha	DEQ

Water Quality Improvement Fund:

The group used the minutes of the group's September 9 meeting as a basis for discussion. The following items were reviewed and agreed to.

1. Payment into the WQIF, either for allocation or compliance credit purposes, should relieve the point source discharger of further responsibility regarding the acquisition of the offsets. Once the funds are in the WQIF it becomes the state agencies' responsibility to ensure an equivalent offset is achieved in the river basin.

2. Payment into the WQIF by a new or expanding facility to acquire allocations should be:

- Made at least one year prior to the commencement of discharge for a new facility and one year prior to the need for offsets by an expanding facility.....this allows DCR to fund the BMPs so they are operating upon start-up of the new/expanded facility.
- Timed to the WGP permit cycle; if the payment needs to be made during the term of the WGP, then the payment should cover the remaining years of the WGP; any subsequent payments should cover the full 5 year term of the WGP
- Tied to the projected flow/load needing to be offset during the permit period, as opposed to basing the offset payment on the facility's design capacity. The offsets are needed only for what is actually discharged.

3. Payment into the WQIF for compliance credits needs to offset the load discharged in excess of the allocation during the previous year; thus, the need for a "bank" of credits during that year. One option discussed to initiate that credit bank is for DEQ to provide WQIF funds to DCR as "seed" money to initiate the credit bank in each river basin. If a discharger needs the compliance credits, any payment into the fund would then be used to install additional BMPs that could be used as compliance credits in the following year. [NOTE: DEQ will need to explore whether WQIF funds dedicated to point source upgrades can be used for this purpose; possibly as a Technical Assistance grant.] Any credits not used for compliance purposes would count against implementation of the non-point source strategy. Therefore, DCR would use their WQIF funds to install the needed BMPs to build the credit bank for the next year.

A major concern is keeping track of the BMPs that are considered part of the allocation for new and expanding facilities, or that might be used as compliance credits. Coordination between the WQIF workgroup and the NPS offsets workgroup is needed in order to know what BMPs will be counted towards offsets: either "ordinary" BMPs that are installed over and above a defined baseline of BMPs on a property, or a set of "enhanced" BMPs whereby a portion of the load reduction can be counted as an offset regardless of any baseline BMPs installed on the property.

The group also discussed how the program ensures that payment into the WQIF is the least attractive option for acquiring allocation or credits, primarily by making it the most expensive option. For new or expanding facilities, an owner who secures non-point source offsets directly from a land-owner can realize the advantage from multi-year BMPs, whereas the WQIF payment option can be designed so that every year the payment needs to be made regardless of how DEQ/DCR uses the funds to secure the offsets. Also, the WQIF payment rate for acquiring allocations needs to be set at the cost of

reducing two pounds of nutrients for each pound that needs to be offset. However, there is no such 2 to 1 ratio if the discharger secures a non-point source offset directly from a land-owner.

Another key issue discussed was how does a discharger demonstrate a “good-faith” effort to secure the allocations from point or non-point sources before he is eligible to pay into the WQIF. It was agreed this question also needs coordination with the non-point source workgroup.

For compliance purposes, the discharger is required to complete a form confirming that point source credits are not available before the WQIF payment option is used. This should be more straightforward, since DEQ will know whether or not any credits are available in that basin from the annual reports from the dischargers. If there are credits available, the discharger will need to demonstrate that he has been unsuccessful in securing credits from those dischargers who have credits.

The group also discussed how to set the payment rate into the WQIF for each pound of nutrients. For new or expanding point sources the cost to secure a pound based on a point source offset should be based upon a documented cost for the discharger in question or a comparable discharger. For the non-point source estimates it was recognized that coordination with the non-point source workgroup was needed to identify which BMPs would be eligible for use as offsets so that a cost estimate could be developed.

For point sources acquiring compliance credits, the cost is based on the average cost per pound for POTWs. DEQ will need to develop this cost based upon available data. It was recognized that in subsequent reissuances of the General Permit, that amount can be increased to provide additional incentives for ensuring progress towards the basin loading caps. For example, payment into the WQIF could be set at some percentage above the market rate for that year. DEQ could secure that value from the Credit Exchange Association.

Following the workgroup meeting a report was made to the TAC. During those discussions several questions were raised that still need to be considered by the workgroup.

First, can and should DEQ use the allocations assigned to un-built plants as the basis for payment into the WQIF for a discharger to acquire either an allocation or compliance credits?

Second, how will DEQ determine when allocations or credits will not be available in a basin so that the WQIF payment option is not available?

Point Source/NPS Trading:

Land use issues – local control vs. personal property rights.

Benefits of BMPs include lowered cost in nutrients (fertilizer overapplication) and better land management.

There needs to be a distinction made between offsets (a transfer of wasteload allocation *prior to* discharge) and credits (annual accounting of what has *been* discharged).

A utility (private or public) won't spend \$50 M on a plant unless it has real assurances that it can get the allocation over a long term. At present, allocations from unused point source capacity can be tapped but these will dry up over time as these point sources receive more demand for sewage disposal.

Before the trading program is fully operational, an interim solution consisting of basic policy decisions to offset acquisition needs to be implemented.

How long should this solution be in effect?

Would contributions to the WQIF (or payment directly to state PDR programs) be preferable?

We need to develop a framework for this.

- Dollar amount to be paid
- Tracking of payments and resolution if offset turns out to be over or under original estimate
- Genuine concern that overestimation of BMP efficiency will occur and will not be adequately compensated for. Need to get the science down on this.
- Ability to quantify load reductions will drive whether this is a marketable commodity, and ultimately whether this program has hope for success.
- Don't want the program to fail for the want of its being immediately perfect.

Tracking offsets:

Efficiencies of BMPS – worth in dollars per pound

How to account for multiple practices

- Role of tributary strategies, Chesapeake Bay Protection Act, Farm Bill
- Ensure that BMP efficiency goes beyond prescribed baselines, acknowledging that at some point there will be a diminishing return on the programs implemented.
- Not much being done to track efficiency of programs already in the ground, whether individually or on a tributary-wide basis. Progress with the trib strategy goals needs to be tracked.
- Can the farmers be convinced that this is beneficial for them?

How to conduct trading

Nutrient Credit Exchange Association vs. electronic marketplace (e.g., NutrientNet)

The Commonwealth should set up a web site to put trading partners together

Landowners vs. tenant farmers as trading partners

What is the duration of the trade?

What minimum requirements will exist?

- Tie BMP to purchase easement
- Provide incentives to landowners to keep land in agricultural production as opposed to development

Must determine baselines – there are none in place now by which voluntary BMPs could be evaluated, then measure (or estimate) improvements made with each additional practice (The Conservation Security Program – NRCS – is in the process of measuring some of these as “soil condition indices”).

Need to guard against putting farmers out of business by inadvertently promoting cropland retirement as a BMP. Farmers are currently involved in the Conservation Security Program on land they own – landowners have not been willing to tie up the land.

For example, the offsets for a new 2 MGD plant would require ~6000 acres of BMPs.

- How long would those BMPs need to be “fixed in place”?
- How would this restrict changes in land use?
- Are there any fall backs if BMPs fail (payment to WQIF by point source)?

- Can an easement or other land preservation instrument be used?
(ultimately, some of these issues may be beyond the development of this regulation)

Create opportunities/incentives to refine measurement of BMP efficiencies from the private sector, including the funding of monitoring as a condition of trades.

The point source should be responsible for ensuring the tracking and continuity of NPS offsets – this could move the program forward in terms of compliance with the BMPs and more monitoring should be possible with additional money coming in.

This program represents a shift from the traditional voluntary nature of non-point source programs to a more structured program. We need to consider the political implications of this.

The goal should be to maximize the acreage in BMPs from whatever source possible, including land conversion/conservation/green space. Focus on outcomes and performance.

Acknowledged that growth will continue and more/better ways of achieving these offsets without driving out agriculture need to be developed and promoted.

As this program puts additional pressure on development and farming practices in the Chesapeake Bay, will this drive (less regulated) development and agricultural activity toward the Southern Rivers (Chowan, Roanoke) watersheds?

Urban NPS impacts and BMPs should not be overlooked during program development.

Permit Structure/Schedule of Compliance: The draft permit (including the schedule of compliance) was discussed in both the workgroup and in the larger TAC session in the afternoon. Kyle Winter of DEQ's Office of Water Permit Programs led the afternoon discussion on the permit.

The next meeting is tentatively scheduled for Monday, October 17th at 9:30 AM at the VA Farm Bureau Federation office, located at 12580 West Creek Parkway in Goochland County.