

## FOR STAC MEETING, DECEMBER 4, 2012 COMMENTS FROM CAC REPRESENTATIVES

I had the opportunity to speak to you as part of a Panel you had last June on Trading and so I thought I build on those comments and update several key points.

Trading in the Bay region continues to be a work in progress – there is much more talk of trading than actual trades but that will likely change due both to Bay TMDL and enhanced stormwater requirements.

### PROSPECTS AND CHALLENGES

- From citizen's perspective, informed individuals and organizations realize that the costs and challenges associated with achieving TMDL mean that Bay partners need to be open to trading and other market and innovative approaches that can help to achieve the water quality goals at a reduced cost. Trading can also make some projects more viable if the ability to generate and sell credits exists.
- However, no matter what opinion you have on trading (and there are many), all should agree that there are problems or concerns with the existing state programs that must be addressed now that we are in "TMDL world" and they must have built in safeguards if trading is to have the public's trust and acceptance. Such safeguards must include scientifically justifiable baselines, credit calculations, independent verification, rigorous oversight, greater transparency than exists today and greater than one-to-one trading ratios for trades involving nonpoint sources.
- Trading and offsets have been included as "core elements" to the states Watershed Implementation Plans. As such, these programs must have the same scrutiny as the other parts of those TMDL plans.
- Trading is NOT the panacea. It seems as if trading is getting an inordinate amount of attention in relation to other key aspects of the WIPs. Given that trading has failed to achieve the levels expected in other areas of the country, this is a concern for citizens – that trading not divert attention away from other important efforts that will us achieve the Bay goals.
- In fact, there is concern that unless nutrient trades and offset policies are done right, the Bay efforts will fail over the long term to meet WQ goals. Improperly designed programs can increase WQ degradation or mean we will fail to meet Bay goals.
- Other stakeholders (potential local govt buyers and developers) want predictability and reduced barriers to trades. Both are important. But citizens need to know taxpayer funds are being used wisely, actual reductions are occurring, local water quality will not suffer and the Bay will improve.

## SPECIFIC CONCERNS WITH IMPLEMENTATION OR POLICY DESIGN

- First, we do not have a uniform or consistent trading program in the Bay region. The Bay state programs vary considerably in basic fundamental design criteria and requirements. Many of these variations are based on policy decisions made when the programs were birthed in the Tributary Strategy era and without much guidance from EPA and so they grew up very differently.
- Second, the debate around trading often falls down to a tradeoff between water quality and making trades. Water quality must be the paramount consideration if the region is going to meet the reasonable assurance test under the TMDL.

Perhaps, STAC, LGAC and CAC can advocate for several refinements that would make the water quality aspects of trading more successful and acceptable. For example, self-verification should not be permitting under any circumstances. Credits should be in the ground and functioning before they can be sold, just as they are for wetlands mitigation.

- There are some practices that should not be allowed to be traded such as nutrient management plans that are hard to enforce under any circumstances and practices such as litter transport, which is unsustainable by virtually everyone's assessment.
- We do need to look at how to incentivize trading and offset practices that are preferred. For example, the permanent conversion of ag land to less intensive uses such as forests is only allowed to generate credits in Virginia currently. Why? In Virginia this has led to the establishment of nutrient credit banks with permanent reductions, much like wetlands banks.
- There is tremendous amount of uncertainty surrounding nonpoint source credits. Yet, 1:1 or slightly higher trading ratios are used in PA and MD and justified by the BMP efficiencies in the model. In VA, the 2:1 ratio came under attack during the last session and is undergoing review since it is not used in other Bay states. Tom Simpson's excellent presentation to TOWG in October clearly demonstrated the limitations of what is in the model and the amount of uncertainty that exists in the on-the-ground performance of BMPs. As Tom said at a recent meeting, they are not finding BMPS over-performing the efficiency ratings in the field and uncertainty ratios higher than 1:1 are a means of addressing this matter.
- We remain concerned that Bay states and EPA are not prepared to provide adequate credit review, oversight, inspections, monitoring and enforcement. Although Virginia is instituting a new upfront credit fee, it has not yet been established and we do not know if any of the other states have such a fee but

resources will be needed if trading programs reach expected levels. (I recently heard from an aggregator that the North Carolina staff working on trading oversight and other environmental enhancements went from 6 to 60 staff to handle their responsibilities. The Bay states combined may have a dozen staff involved.)

- Related to the potential need for additional state staff for trading oversight and verification- We have heard from EPA Bay Program that many of the states have un-liquidated obligations for the Chesapeake Bay Implementation Grants (CBIG) and/or the Chesapeake Bay Regulatory and Accountability Program Grants (CBRAP). The CBRAP grants, in particular, could go toward hiring new staff that could enhance accountability for the trading programs.
- Interstate trading in the Bay region is not ready for prime time until there is greater consistency among state programs. Also, the Bay Commission report indicates that watershed-wide trading has a marginal effect on cost reductions which implies that the additional cost of managing such a program would likely outweigh any benefits derived.
- How will Ag Certainty programs and offset policies interface with trading programs?

## CONCERNS ABOUT SCIENTIFIC OR TECHNICAL INFO AVAILABLE

- We understand that a small group from STAC will be reviewing EPA technical memoranda, the first of which will be coming out this month. Certainly your perspectives on resource economics and water quality science would be valuable to the process. So, too would the state level regulatory processes benefit from STAC participation.
- One area where STAC could help is to identify the common elements of a successful monitoring program for tracking the actual on-the-ground results occurring from trading and offsets
- Development of a rigorous verification procedure for trading acceptable to all the Bay states is also needed that goes behind the verification issues associated with the voluntary BMP program.

Another need is for additional research into the effectiveness or efficiencies of agricultural BMP practices .This has a bearing on uncertainty ratios . This was pointed out by Jim Pease at a recent meeting on trading ratios that EPA convened. I understand from Jim's comments that some of the efficiencies were set despite very limited research to work from.

- Finally, three other research questions that come to mind are how to properly address the issue of multiple crediting that some are suggesting could include

nutrient credits and ecosystem services and how to judge the credit worthiness of particular nontraditional sources (also called assimilation services) such as oyster aquaculture that is being championed by some. Lastly, there is increasing reliance on an array of online calculators to determine baseline for farm practices. STAC could provide a valuable service by evaluating the consistency of these tools with the TMDL baseline and compare them to others in use elsewhere.

- These represent some of the concerns citizens have – the eyes of the country are again on the Bay region when it comes to trading. We need to get it right for our sake as well as the nation's.