



May 15, 2014

Dr. Kirk Havens, Chair
Scientific and Technical Advisory Committee
645 Contees Wharf Road
Edgewater, Maryland 21037

Dear Dr. Havens:

Thank you for the opportunity to respond to the STAC Workshop Report, "*Critical Issues in Implementing Nutrient Trading Programs in the Chesapeake Bay Watershed.*" This report's focus on efficiency of cost and nutrient trading implementation, as well as its discussion on "alternatives to trading," provides additional ideas for consideration in future policy and program decisions.

The report summarizes the many challenges Bay jurisdictions face when establishing trading and offset programs. We hope readers will appreciate that many such challenges exist in all aspects of Bay restoration, not just trading and offsets. In that regard, the section titled "Alternatives to Trading to Achieve NPS Reduction Goals" presents a number of interesting issues for discussion. To be clear, the Management Board cannot endorse any one idea and indeed many ideas in that section likely would face challenges, but we welcome STAC taking the time to explore these areas that may be new to many Bay stakeholders.

The Management Board has two general concerns, discussed below, and would like to offer some specific clarifications that should be incorporated into the report before its release.

1. Since trading and offsets serve two different purposes, it should not be assumed that the best program design for each should be the same, or that the analysis discussed in the report should equally apply to both. The report uses the terms "trading" and "offsets" interchangeably, whereas the Bay jurisdictions differentiate trading as a compliance option for permitted point sources and offsets as a means to offset growth for both point sources and nonpoint sources.

By conflating trading and offsets, the report may oversimplify the decision making involved in each. Maryland and Virginia, for example, each approach trading differently than offsets. Also, whereas all jurisdictions need to have an offset program to address growth, some jurisdictions may choose not to develop trading programs.

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2. The report does not recognize that to be consistent with the overall TMDL loading capacity, jurisdictions cannot relax (i.e., make less stringent) one sector's allocation without tightening (i.e., make more stringent) another sector's allocation. As noted in the report, each Bay jurisdiction derives the farm specific baseline from the overall allocation that they assigned to the agricultural sector in their jurisdiction. The Bay jurisdictions had to weigh many factors before dividing the pollutant allocations between source sectors under the Bay TMDL and different jurisdictions took different approaches. One state determined that the level of effort from each source sector to achieve reductions should be similar. Another state based agricultural allocations on their share of the load. This initial determination of how the load would be assigned to the agricultural sector also plays a role in how easy or difficult it will be for individual farms to meet baseline and enter into the trading market. While the report does an excellent job making clear that baselines derived from such allocations state set allocations have ramifications for trading markets, we feel the larger context in which the jurisdictions make such decisions, and the constraints that might drive or influence those decisions also deserves substantial discussion.

We would also like to offer the following clarifications to the report:

1. The report incorrectly refers to the EPA water quality trading and offset technical memoranda, as well as EPA's 2007 permit writer's toolkit for water quality trading, as "guidance." These products are not guidance documents. The technical memoranda, for example, are meant to express and elaborate on EPA's expectations, as set out in Appendix S and Section 10 of the Chesapeake Bay Total Maximum Daily Load (Bay TMDL), for the Bay jurisdictions' offset and trading programs.
2. Within the Chesapeake Bay watershed, trades are occurring in Virginia as well as Pennsylvania.
3. Many Bay jurisdictions see a market for trading and offsets to meet new and existing stormwater loads, not just to meet loads generated from wastewater treatment plants, which was the more narrow focus of this topic in the report (page 15).
4. The report incorrectly states on page 16 that the Chesapeake Bay Program (CBP) favors performance-based baselines. CBP has not expressed this preference and recognizes that both approaches – performance-based and practice based baselines – have been adopted by different jurisdictions.
5. The report correctly says on page 20 that, "PS-NPS trading alone will not be sufficient to achieve the load allocation goals in the Bay TMDL." We recommend that STAC consider making this point towards the front of future reports to better serve the public's understanding and expectations.
6. The report correctly refers to EPA's expectation on implementing an uncertainty ratio in the Bay jurisdictions' water quality trading programs, but should also note that the final technical memorandum, "*Accounting for Uncertainty in Offsets and Trading Programs*," issued February 12, 2014, allows for less than a 2:1 ratio under defined circumstances articulated therein, provided that the jurisdictions demonstrate that the lower ratio is justified and protective of water quality.

7. The report recommends on page 26 that we “incentivize on-site *validation* of non-point source practices, either through inspections or monitoring (depending on the practice).” The term that is used within the Partnership is “verification.” The Partnership currently is engaged in a substantial effort to develop verification protocols and guidelines for both point and non-point source BMPs and conservation practices. While on-site verification is preferred, other equally effective verification practices and technologies should be considered and utilized if appropriate and less costly.
8. The report cited seven recommendations for applying market forces to trading and incentive programs. We are pleased to note that the Management Board currently supports several of these recommendations, like verification of non-point source practices, the use of alternative, performance-based policy approaches for addressing non-point source pollution, and continuous research on the performance of best management practices and the delivery of pollutants downstream to improve the accuracy of estimated nutrient reductions. We look forward to using these recommendations as the basis for continued discussions with the jurisdictions in order to improve the policies that frame each trading program.

In closing, on behalf of the Management Board, please extend my thanks to the workshop steering committee and participants for their time and effort in the workshop. We remain, as always, appreciative of STAC’s role in providing independent insight and guidance in management of the Chesapeake Bay restoration effort.

Sincerely,



Nicholas A. DiPasquale, Chair
Management Board

cc: Management Board Members
Goal Implementation Team Chairs