

Maryland Water Quality Trading Advisory Committee
Meeting Summary
Chesapeake Bay Foundation, Annapolis, MD
May 19, 2016

Committee Members in Attendance:

Tom Ballentine	<i>NAIOP Maryland Commercial Real Estate Development Association</i>
Bevin Buchheister	<i>Chesapeake Bay Commission</i>
Lynn Buhl	<i>Maryland Department of the Environment</i>
Jim Caldwell	<i>Howard County Office of Community Sustainability</i>
Valerie Connelly	<i>Maryland Farm Bureau</i>
Lisa Feldt	<i>Montgomery County Department of Environmental Protection</i>
Brent Fewell	<i>Earth & Water Group</i>
Patricia Gleason	<i>US Environmental Protection Agency, Region 3</i>
Jeff Horstman	<i>Midshore Riverkeeper Conservancy (Alternate –Ridge Hall)</i>
George Kelly	<i>Resource Environmental Solutions</i>
Les Knapp	<i>Maryland Association of Counties</i>
Steve Lafferty	<i>Maryland House of Delegates</i>
Kate Maloney	<i>Maryland State Builders Association</i>
Erik Michelsen	<i>Anne Arundel County Department of Public Works</i>
Doug Myers	<i>Chesapeake Bay Foundation</i>
Susan Payne	<i>Maryland Department of Agriculture</i>
Chris Pomeroy	<i>AquaLaw, Maryland Association of Municipal Wastewater Agencies, Maryland Municipal Stormwater Association</i>
Mindy Selman	<i>USDA Office of Environmental Markets</i>
Helen Stewart	<i>Maryland Department of Natural Resources</i>
Rob Shreeve	<i>State Highway Administration</i>
Joe Tassone	<i>Maryland Department of Planning</i>
Lisa Wainger	<i>University of Maryland Center for Environmental Science (Alternate – Dave Nemazie)</i>
Sara Walker	<i>World Resources Institute</i>

Facilitator:

Lauren Franke	<i>Maryland Environmental Service</i>
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Other Attendees:

Vimal Amin	<i>Maryland Department of the Environment</i>
Ray Bahr	<i>Maryland Department of the Environment</i>
Greg Busch	<i>Maryland Department of the Environment</i>

George Chmael	<i>Council Fire</i>
Brian Clevenger	<i>Maryland Department of the Environment</i>
Chandler Denison	<i>Johnson Mirmiran & Thompson, Inc.</i>
Clay Detlefsen	<i>National Milk Producers Federation</i>
Jacob Dorman	<i>Contech Engineered Solutions</i>
Paul Emmart	<i>Maryland Department of the Environment</i>
Michael Forlini	<i>Funk & Bolton, Clean Chesapeake Coalition</i>
James Hearn	<i>Washington Suburban Sanitary Commission</i>
Christine Holmburg	<i>Maryland Environmental Service</i>
Marya Levelev	<i>Maryland Department of the Environment</i>
Larry Liebesman	<i>Mason Law</i>
Shannon McKenrick	<i>Maryland Department of the Environment</i>
Bill Morgante	<i>Maryland Board of Public Works</i>
Pam Parker	<i>Montgomery County Department of Environmental Protection</i>
Allison Prost	<i>Chesapeake Bay Foundation</i>
Phillip Stafford	<i>Maryland Department of Natural Resources</i>
Ed Stone	<i>Maryland Department of the Environment</i>
Maggie Witherup	<i>Gordon Feinblatt LLC</i>
John Yarchoan	<i>Magnolia Land Partners</i>

Action Items:

- Incorporate comments into the Draft Trading Manual
- Distribute to the Committee the policy language document developed by CBF, MRC, and CBC

Meeting Minutes:

1. WELCOME & INTRODUCTIONS

Ms. Franke welcomed the meeting attendees and everyone introduced themselves.

2. REVIEW OF THE APRIL 21 MEETING MINUTES

Ms. Franke asked the Committee members if anyone had any corrections or comments on the April meeting minutes. The meeting minutes were approved as written.

3. REVIEW OF WQTAC COMMENTS

Ms. Franke stated that the comment table had been provided to the Committee and noted that the highlighted comments had been added since the last meeting. Ms. Franke stated that at the April meeting the Committee had discussed the protection of local water quality and the trading hierarchy and she wanted to verify that members were in agreement. Ms. Buchheister asked what the final decision had been involving the hierarchy. Ms. Payne stated that consensus was that the hierarchy should be considered but not deemed a requirement. Ms. Buhl agreed that

hierarchy needs to be mentioned and encouraged. Ms. Buchheister stated that the hierarchy should remain in the Trading Manual but not be relied on entirely.

Ms. Buhl asked what a majority of the Committee thought in regard to including the trading hierarchy. Ms. Wainger stated that to get a true sense of where each Committee member stood the issue would have to be thoroughly discussed again. Mr. Tassone agreed and stated that a vote could be conducted if it were made clear what was being voted on as it is not simply all or nothing. Ms. Buhl stated that the options would be to leave the trading hierarchy in place as it currently is or include but clarify that it is not required. Mr. Michelsen stated that level one of local water quality and TMDL obligations should be removed entirely since other existing provisions already address the issue. Mr. Kelly clarified that Mr. Michelsen had proposed the hierarchy include the regulated MS4 jurisdiction, followed by the 8-digit watershed, and then free trading. Mr. Tassone asked if “credits not available” would be sufficient to change levels as it had been suggested through comments. Mr. Clevenger stated that it should be sufficient as trades cannot be compelled if a jurisdiction can’t find anyone willing to trade. Mr. Tassone offered the example of one jurisdiction with available credits charging an outrageous amount of money. Ms. Payne stated that then a decision would have to be made to determine which would be less expensive: to buy credits or install an urban Best Management Practice (BMP). Ms. Feldt stated that the Committee has discussed trading is for time for the MS4 jurisdictions to meet permit compliance. Mr. Pomeroy asked if the trading for time option could be included in the options previously presented to the Committee. Mr. Pomeroy explained that it would focus the hierarchy in its use, including the use for trading for time, as well as more permanent impacts, each with their own set of standards. Ms. Buchheister stated that aligning for growth would be an issue to deal with sooner than later and asked what the end result would be for the growth discussion. Mr. Kelly stated that the discussion had begun by looking at the idea of whether to adopt a hierarchy or not before moving to the topic of trading for time. Ms. Buchheister stated that the hierarchy should be kept as a cautionary principle to encourage local trades first. Mr. Shreeve stated that State Highway Administration (SHA) is able to buy credits outside of their MS4 boundary because they have resources within those areas. Mr. Shreeve explained that SHA could be used to target areas that are not progressing fast enough while the counties can target areas that are already progressing. Mr. Shreeve stated that limiting Stormwater Management (SWM) restoration to TMDL watersheds within MS4 jurisdictions permit areas will limit the ability to gain progress in areas where progress may not be made otherwise. Mr. Kelly asked if Mr. Shreeve would advocate for the three trading geographies. Mr. Shreeve explained that he would advocate for the three trading geographies.

Ms. Wainger stated that there is a penalty for going outside of a local watershed but encouraged the Committee to think about the greatest benefits. She gave an example of breeding fish population in one stream and asked if it pays to focus the efforts and resources on such an area. Mr. Myers agreed with Ms. Wainger but asked who makes the decision if trades are happening

bi-laterally. Ms. Payne stated that the proposal to use the Bay Restoration Fund (BRF) to purchase credits could focus on targeted areas of need. Ms. Payne explained, in terms of free market trading, that every time a requirement is added or geography is reduced, it becomes more and more difficult to make a trade. Ms. Payne also stated that we tend to overestimate the importance of trading. Trading is just another option for meeting water quality challenges, and people will make a decision about whether to use trading or not based on a number of factors, including political and financial considerations. Ms. Payne also stated that the hierarchy can always be changed or changed back through the use of adaptive management. Mr. Pomeroy stated that one thing the Committee had not yet discussed was the biggest local water quality aspect, the permit itself. Mr. Pomeroy explained that the permit does two things: directs 20% restoration and contains a local TMDL provision, which has local water quality protection built in. After 5 years, another permit can be issued under MDE's control and discretion creating a permanent regulatory situation as we move forward.

Mr. Myers asked the Committee if the hierarchy could remain to serve as guidance while the word "required" for trading is removed with the understanding that it may have to become a regulatory requirement. Ms. Buchheister stated it should be included as MS4 permits are designed to achieve protection of local water quality; however, when looking for a trade, jurisdictions should also be looking to improve the water quality in a place that has a local TMDL. Ms. Wainger asked what was defined as local and explained that if the impact is not where the water quality harm is occurring, then it would not be helping the TMDL. Mr. Pomeroy suggested adding language that gives assurance that the removal of the hierarchy does not undermine the local TMDL. Ms. Buhl stated that all Committee members are invited to participate in re-examining the Aligning for Growth policies between now and the end of the year.

Ms. Franke asked the Committee if there were any other comments submitted during the last meeting that the Committee would like to discuss. Ms. Buchheister stated that the Committee keeps discussing the concept of trading in time and asked if that could be included as a key principle as it is not currently listed. Ms. Buhl agreed with the suggestion of inclusion to balance the current language of trading in perpetuity. Mr. Kelly stated that the Manual currently refers to trading permanent credits and asked about the legalities of using trading in time if language is to be added to the Manual to support this type of credit trading. Ms. Maloney asked Mr. Kelly if this was more of an aggregator issue and gave the example that if Montgomery County needs to buy 20 pounds for five years and you as the seller might maintain production of the 20 pounds and have another client after five years. Ms. Maloney continued, asking if the permanency of the credit applies to the BMP, or the customer. Mr. Kelly stated that the permanency of the credit applies to the type of customer. However, either dynamic could be developed. Mr. Michelsen stated that the MS4s are not looking for a way to extend the compliance timeline outside of their jurisdictions but are looking for local implementation. Mr. Michelsen stated that giving MS4s

flexibility to trade in time is an assurance that more work will be done within the MS4 boundary or within the TMDL watersheds of concern, as opposed to something more permanent outside of the jurisdiction. Mr. Shreeve stated that the benefit of permanent credits is that the credit buyer can purchase credits in perpetuity while the seller could insure that credits are maintained in perpetuity. However, there is a need for both permanent and non-permanent credits based on demand type (short-term and long-term). Mr. Kelly explained that one of the things the Committee is setting themselves up for is the bigger question about trading credits. The question is do we prefer to buy short-term credits that may not be additional within the jurisdiction verses something that is additional outside of that jurisdiction.

Mr. Hall raised the question of public accountability and availability of documents in a timely fashion to allow the public an opportunity to comment. In the technical memorandum on certification and verification, there is an excellent discussion on page 9 on what should be in the public record in a timely fashion and suggested that MDE and MDA use the document as a starting point regarding regulation. Ms. Payne stated that on June the 14 a demonstration session will be held at MDE on the Urban Assessment Tool, which will be used to assess the needs of the development community for offsets, as well as the enhanced registry and marketplace. Session attendees will receive the user manuals, and those who take part in the trading can open an account (i.e. land owners, MS4 jurisdiction counties, verifiers, aggregators). Those projects that are certified will be placed in the public portion of the registry when the credits are approved. The registry tracks term and permanent credits in all sectors (i.e. agricultural, wastewater, septic, and stormwater) and tracks and displays credit generating projects, verification activities, credit trades, and usage records for each of the state programs. Each credit has a unique serial number which is associated with the credit for its entire lifetime. There are state-specific policy requirements, such as customized trading ratios, which are automatically applied, and accommodation for Edge of Stream (EOS) and delivered credits. There is document management, verification schedule management, and many search and record functions. Verifiers can also create accounts to review and submit verification reports. The marketplace is where certified credits can be posted by their owners for sale, or those looking for credits can create a post detailing what is needed (i.e. price, number of credits). Ms. Wainger asked what will be revealed to the general public. Ms. Payne replied that the general public will be able to access a vast amount of the information, but different states have different requirements in terms of what is kept confidential. Ms. Walker stated that the Maryland requirements are still to be determined. Mr. Myers, who has already participated in a demonstration of the two components, stated that the usage records would be of the most interest; it is assumed that once credits are used, there will be a connection between the permit number and the credit usage documentation as part of the transparency of the program. Ms. Payne stated that searches can be conducted by permit number, basin, jurisdiction, etc. Mr. Myers stated that the initial concern was that the permit would be the only place that trades would be recorded, but the registry and marketplace has solved that issue. Mr. Hall stated, regarding credibility, that the credit being proposed to be

registered includes baseline calculations. It is important for credibility of the program for the public to have some assurance that the baseline has been met before credits are generated. Mr. Myers stated that MDA will certify the credits before they are placed in the system and before they are allowed to be traded. Ms. Payne reminded the group that there are eligibility requirements, and MDA is authorized by legislation as the only entity in the state which can certify, verify, and register agricultural credits. One of the reasons credit information is not made public before verification is because there is a high rate of error in submissions. The online assessment tool must be used to calculate credits.

Mr. Ballentine stated that a decision needs to be made to either discuss more of the comments or discuss the request of the MS4s to set up a structure for trading (i.e. how it would work) and provide recommendations. Mr. Ballentine is concerned about mortgaging future sewer capacity. Ms. Buchheister stated that there was previously the discussion of use of capacity credits. Ms. Franke stated that there were many comments regarding whether the permits needed to be modified or not to reflect trading. Ms. Prost asked if MDE has heard from the EPA regarding reopening and modifying the permits. Mr. Clevenger replied that MDE has heard from the EPA, and the Agency stated that there are mechanical obstacles that need to be overcome to allow trading, which include opening up the MS4 permits for a major modification. Restoration plans, which are required, will also have to be returned and rewritten to allow trading. An enforcement action might be used as a bridging mechanism until the next permit term begins in 2019. Mr. Fewell asked if the opportunity to use general permits for MS4s was raised with the EPA. Mr. Clevenger replied it was not because MDE is working under the Phase I permit. Mr. Michelsen asked if the WWTP activities are part of the BMP guidance which is referenced in the MS4 permit. Mr. Clevenger replied that it is not there now and it has not been considered. Mr. Pomeroy stated that the future revisions incorporated in the permits should accommodate improvements over time. Mr. Pomeroy asked if MDE followed down the rule-making path, would some of the current issues be cleared up. Ms. Buhl stated that a big driver is the public notice concept. Mr. Pomeroy stated, regarding the general permit approach, that the Virginia general permit is adopted as a state-wide regulation. Maryland may be able to use this as a mechanism without a lot of permit modifications. Mr. Clevenger suggested imposing an enforcement action, which would eliminate the need for opening the permits and rewriting the restoration plans. Ms. Maloney asked if it would be a consent decree individualized for each jurisdiction. Mr. Clevenger replied that it would. Mr. Kelly asked if the enforcement action can be completed immediately, before any violations occur. Mr. Clevenger replied in the affirmative, and while nothing has been determined yet, options are being explored. Mr. Myers stated that the basis of an enforcement action is the realization that the waste load allocation will not be met within the permit term. Mr. Clevenger stated that was the assumption. The MDE Assistant Attorney General composed an argument to EPA, and within that argument, there was discussion of "alternative practices." EPA came to the conclusion that trading is a major modification and that everything would have to go through the public process. Ms. Feldt asked

if the trading in time question was asked. Mr. Clevenger stated that trading in time means different things to different people. Some define trading in time as trading against the cap while others define it as allowing trading until there is enough capacity built to complete the urban work and at some point trading will no longer be needed. Ms. Buchheister asked for more details about the enforcement action. Mr. Clevenger stated that in negotiations of the agreement, which would be executed between the jurisdiction and MDE, it would be permissible to explore other mechanisms of permit compliance, including trading. There would be no public comment on that portion. Mr. Myers asked if that issue would be covered in the regulations for trading. Mr. Clevenger replied that a timing issue comes into effect because regulations can take a long time to get written and implemented. Using enforcement to introduce trading in the MS4 community is a bridging mechanism. Once the permits expire, all of the mechanism issues will disappear because the new permits can be written to incorporate trading.

4. CREDIT SUPPLY

Ms. McKenrick gave a presentation on Estimated Available Nutrient Credits from WWTPs operating at Enhanced Nutrient Removal (ENR) Levels (See Attachment 1 for an updated copy of the presentation). Federally, privately, or State-owned treatment plants were not included in the calculations. Facilities that are in the planning stages of ENR have been included. The first table is Table 3 from page 34 of the Draft Trading Manual. Ms. Feldt asked if Washington Suburban Sanitary Commission counties were included. Ms. McKenrick replied that they were. Ms. McKenrick reminded the group that what is being presented is a coarse level of estimation. Mr. Kelly asked, regarding the range of performance below 4 mg/L of nitrogen by putting in ENR, if 3 mg/L was what was being reached with just the ENR or if anything additional was being done to reach that operational level. Ms. McKenrick stated that it is most likely a combination of both. There is a permit level of 4 mg/L, but the facilities are being designed to run around 3 mg/L to allow for flexibility (i.e. aeration, chemicals, additives, etc.). Mr. Busch stated that assumptions were not made on how the MS4s were meeting those levels. Ms. Feldt asked if they were feasible levels. Mr. Busch replied that they are achievable.

Mr. Michelsen stated, referencing the 2008 Nutrient Cap Management strategy, that the nutrient load caps are based on design capacities to reach an annual concentration of 4 mg/L of total nitrogen, and the nutrient cap based permit limits for significant point sources will serve as the baseline for generating point source discharge credits for the use in trading. Mr. Hall asked if that was the act that generates the credit. Mr. Busch stated that MDE is currently in the process of overhauling the significant municipal plants with the assumption that the facilities will reach the ENR limits. Ms. McKenrick stated that the numbers provided are from existing WWTPs. Mr. Hall stated that the facilities must take an action that creates the reduction that generates the credit. If the act is installing new technology, which reduces the volume, than it is a legitimately generated credit. Mr. Busch clarified that volumetric reductions are not being discussed, performance levels are being discussed. Mr. Stone stated that there are advanced treatment

facility upgrades. It was established that 4 mg/L would be the appropriate permitting level, and facilities would operate at some level below that, thus providing a margin of safety. As one of the principles of market stability in order to create a viable market, there needs to be certainty in the marketplace. The baseline is 4 mg/L and the amount of credit that could be available needs to be determined. Mr. Hall asked if the margin of safety was being taken away to be sold as a credit. Mr. Stone stated that a facility cannot operate without a margin of safety, and the trade will not be accepted unless the facility can find another way to further reduce the limit. Mr. Stone stated that the facilities are gaining reductions from current modern upgrades. Ms. Buchheister stated that the State paid for these facilities to reach 3 mg/L and believes that the facilities must be performing under 3 mg/L in order to be able to trade. Mr. Ballentine asked what limits the facilities were operating at or were expected to be operating at. Mr. Busch replied that it was still early in the process and that the current estimates are across the current permit cycle for the whole sector, not individual facilities. Ms. Stewart stated that the Bay sees loads, not concentrations, which means wet years versus dry years should be factored into the estimates and could have very different effects. Mr. Michelsen stated that the WWTP facilities still have to meet their permit limits no matter the yearly conditions. Mr. Myers asked if the flow is increased, would more credits be generated. Ms. McKenrick replied that was the case, an increase in flow will generate more credits as long as concentration level is maintained. Mr. Michelsen stated that the floating cap is based on the total load. Mr. Myers suggested that the baseline be concentration and load defined.

Mr. Pomeroy asked if the counties listed included municipally owned facilities as well as minor plants. Ms. McKenrick stated that only county-owned and municipal major WWTPs were included for all listed MS4 counties (counties covered by MS4 permits). Mr. Ballentine asked for clarification regarding the time horizon. Ms. McKenrick stated that the time horizon is the current 5-year permit cycle. Ms. Wainger asked about the numbers used for the population projections. Mr. Busch stated that the flow numbers were based on 10-year average, 2006-2015 flow data, adjusted for 2015 population projections based on US Census population growth trends. Ms. Wainger stated that the numbers were not taking future growth into account. Mr. Busch replied that this is correct. He indicated that the populations are growing at about 1% a year, but future growth was not taken into account for this presentation. Ms. McKenrick reiterated that the calculations are not what the facilities are currently doing or what they are capable of doing, but of how much credit could be generated if they were performing at this level. Ms. Wainger asked how feasible the projections are. Ms. McKenrick stated that this varies by the operating ability of the plant (i.e. size, design flow) and it is difficult to determine a feasible level at this scale. Ms. Wainger asked if it was safe to assume that facilities operating below their design flow would be more likely to achieve these levels. Mr. Busch stated that the analyses are a more statistical look at the numbers and not an understanding how the processes are occurring. Facilities might not be able to achieve the low concentrations as the facility

reaches its capacity. Ms. McKenrick reiterated that the estimates were for planning purposes only.

Mr. Pomeroy suggested providing estimates for Phase II MS4s. Mr. Kelly asked if the facility is permitted at 4 mg/L and it is operating at 3.7 mg/L with the intent to generate credits, how the facility would deal with the permit, and is there tremendous variability in how the plants operate. Also, how would the crediting proceed? Mr. Stone replied that it would be up to the facility to negotiate how much of the performance would be initiated in the trade. The cap number will change based on the concentration multiplied by the flow. The trade is implemented as an annual average. Mr. Kelly asked if the permit would have to be changed. Mr. Stone replied that if it were initiated as a permit credit, then a permit revision would need to occur. Mr. Fewell asked if there has been State policy or a discussion about how much excess capacity would be able to be traded away. Ms. Stone replied that currently the discussion revolves around performance versus unused capacity, and no discussions have been held regarding that topic at this time.

Mr. Kelly asked if “performance credits” should be eligible for trading and for how long. The current estimation is that wastewater credits will exceed the need, and the MS4 requirements will be met through performance credits. The question is if this is something the group can agree to. Mr. Tassone stated that the performance credits would account for a substantial portion of the load reductions. Mr. Kelly asked, referring to additionality, if the Committee was comfortable with the policy of using credits created from reductions which have already been implemented. Mr. Tassone asked if the term “additionality” was alluding to the idea that credits can be created from reductions that have already occurred. If so, then additional reductions would have to be made to allow another entity to discharge in the watershed. Mr. Tassone further asked if a county has an MS4 permit and it is going to get credits from a WWTP, does one entity pay the other. Ms. Wainger asked if this concerned money changing hands or paper credits. Mr. Michelsen stated that it would be a business transaction between two entities that does not need to be governed by these proceedings. Ms. Prost stated that it needs to be decided if credits can be produced by those facilities that have used the BRF funds to upgrade, and asked who would get paid for the credit (i.e. State, tax payers). There are significant questions on how this would be anything but a paperwork exercise and how it would result in water quality improvements other than what has already been seen. Mr. Myers stated that there has been discussions regarding trading in time and eventually the facilities will reach capacity. Mr. Myers asked if they were to be allowed to generate credits, then it is only a matter of time until the credits run out. Mr. Michelsen stated that there should not be a permanent trading away of capacity. The counties paid for the upgrades but not the capacity. Mr. Fewell stated that credits generated from performance are used as an annual average and would not be able to be traded until the end of the year. Mr. Fewell asked how that would affect other practitioners trying to sell credits. It would be very difficult for the market to understand those dynamics, and this will create

logistical problems for the market. Mr. Tassone stated that the same idea applies to a BMP on a farm.

Ms. Buchheister asked when the credit would be sold from a WWTP. Mr. Fewell stated that there is excess credit capacity that is sold in a paper trade and would be between WWTPs, making it a closed market. Mr. Ballentine stated that the MS4s will not be able to meet permit compliance without a solution and this is the most concrete solution to manage that crisis. Mr. Kelly stated that potential enforcement is an alternative option to build solutions. On another policy front, there is potential for undermining trading in general if credits are created and traded from practices that have already been implemented. Mr. Pomeroy stated that the strategy for many years has been to allow WWTPs to lead the way. Now it is becoming clear that the MS4 permits cannot be met. The permits need to either be modified to become achievable or have a market-based method to address the issue. There is an immediate need for credits and no one can deliver the supply except for the WWTPs. Mr. Tassone asked in terms of credit supply, if no one in agricultural sector would be motivated to compete under this scenario. Mr. Kelly replied that there would be trading that might not even have dollars exchanged. If the performance credits can be determined to be legitimate credits, then they could be used. Mr. Fewell stated that if the performance credits are allowed to be traded, then the demand will be satisfied. Mr. Pomeroy stated that the credits are additional and legitimate. It is the only supply that is possibly available to fulfill the MS4 permits. Mr. Kelly asked if they were already taken into account for the TMDL. Ms. Buchheister stated that credits for over performance are used in meeting the WIPs for the TMDL. Mr. Tassone asked if they are taking credits for the reductions below 4 mg/L total nitrogen. Ms. Prost stated that unused capacity is being credited. Mr. Pomeroy stated that, indirectly, they are balancing wastewater and stormwater; what is being discussed is facility to facility having the same balance. Mr. Tassone stated that the ultimate point is that credit generation through performance occurring in the short term for MS4s is very different than a robust trading market for all of the sectors.

Ms. Wainger stated that the committee should tread carefully if they are going to state that public money does not count in exceeding performance. Paying for performance is how innovation occurs. The trading regulations and permitting will not be in place in the foreseeable future, which will delay the creation of the market, but the performance credit gives the program time to get everything straightened out. Ms. Buchheister disagreed and requested that the policies be the same across all of the sectors, including the policy of not being able to sell credits if cost-shared money is used for implementation. Mr. Kelly re-iterated that cost-shared projects cannot be used to generate credits. Mr. Pomeroy stated that WWTPs and MS4s are government-to-government trades.

Mr. Myers stated that if the Bay as a whole is meeting the milestones (i.e. under the numeric limits) but not all of the sectors are meeting their allocations and are not being held to their

individual WIPs, then trading will not work. Each sector needs to meet its loads one way or another. It doesn't seem that trading will be a successful tool if MS4s are mainly responsible for meeting the TMDLs. At some point, we will have to shift the focus to finding reductions in other sectors. Mr. Michelsen stated that the MS4s are not asking for a respite from the restoration activities which have to be conducted within the stormwater sectors. Trading has been said to be a solution to reduce the agricultural sector load, but all it is doing is shifting the load to another sector (i.e. urban sector). Mr. Tassone asked that if the MS4 situation is imminent and trading with WWTPs with performance credits could handle the issue for a few years, then could that portion of the trading market be separated out from the rest of the long-term market until the point when the market could come together and evolve in to what was originally envisioned. Ms. Buhl stated that there are challenges including the MS4 permits in the 2014-2019 permit cycle that cannot be currently fulfilled. The next round of permits could be rewritten to fix the issues and drive the demand on the agricultural sector. Ms. Feldt suggested a Stage I and Stage II approach. Mr. Myers stated that the current discussion does not involve trading, but centers on solving the permit issues within a 5-year time limit between two different sectors in the same geographic space. Ms. Prost stated, from a local water quality standard, it seems impossible to be able to persuade the public of the idea of WWTPs performing under 4 mg/L and selling the credits while not trying to gain more reductions. Mr. Tassone asked if the MS4 sector would implement any more reductions for the rest of the cycle, and Ms. Feldt replied it would not. Ms. Prost asked what percentage will be allowed and how would it be credited to the MS4s while telling the public that their water is improving. Ms. Buchheister suggested that WWTPs be required to make investments to get the facilities below their current levels to gain water quality improvements. Mr. Stone stated that the broad aggregate is relying on the WWTP sector to reach the goals for the Bay because the MS4 sector is falling behind. Ms. Prost asked how this would result in any less pollution going in to the Bay than there is now. Mr. Michelsen stated that it would be saving the public hundreds and millions of dollars. Mr. Pomeroy stated that permits are pushing the MS4s to reach the extent of their limits as fast as possible, which is the immediate benefit. Mr. Stone stated that the WWTPs would be sacrificing their future capacity. Future growth would be affected by trading in time until the capacity was returned.

5. NECESSARY ACTIONS TO IMPLEMENT TRADING

Ms. Franke stated that pilot programs are needed to help implement trading. Mr. Shreeve volunteered for the pilot program. Ms. Feldt asked what would be the framework of a pilot project. Ms. Buhl replied that a pilot project is envisioned to implement the suggested trade and would allow everyone to evaluate and work out any issues. Mr. Myers stated that the Chesapeake Bay Foundation (CBF) tried a pilot project but has encountered obstacles. A report is forthcoming and can be distributed. Ms. Walker stated that the pilot project was still ongoing, but a detailed discussion would have to wait a few more months. Mr. Fewell asked about the impediments. Mr. Myers stated that, in general, there was a lack of supply of credits.

Ms. Franke asked for suggestions for regulations. Mr. Myers stated that the Draft Manual has requirements and guidance imbedded within its policy statements and suggested separating the two. In coordination with the Midshore Riverkeeper Conservancy and the Chesapeake Bay Commission, CBF provided a draft regulation document to MDE and MDA that pulled out the policy statements from the Draft Manual; this will be distributed to the Committee (See Attachment 2). Mr. Hall explained that the goal was to identify the technical manual requirements that are needed to assure Clean Water Act compliance in order to increase the likelihood of a favorable EPA review. Mr. Fewell asked if those who are promoting the regulation are suggesting no trading in the interim. Mr. Myers stated that pilot trading will occur to help refine the manual. A meeting attendee stated that he was apprehensive and requested advanced notice and the opportunity to comment on the rule-making since all of the counties and other entities are unable to be present at these meetings. Ms. Payne clarified that any rule-making would go through the normal public comment period.

Ms. Payne stated that everyone has been given a copy of the adopted agricultural credits regulations as well as the proposed revisions (See Attachments 3 and 4). The revisions are expected to appear in the *Maryland Register* on May 27, which will begin a new 30-day comment period. A meeting attendee asked if comments received will be addressed, and Ms. Payne replied that all comments will be reviewed and discussed internally as were the initial round of comments and suggestions. The regulations deal with the verification, certification, and registration of agricultural credits, not how the credits are exchanged. Ms. Payne reminded the group that registration is required in order to participate in the upcoming Urban Assessment Tool and Registry and Marketplace Component demonstrations on June 14.

6. PUBLIC COMMENT

Ms. Buchheister stated that there was a handout at today's meeting regarding credit generation, but it did not include agricultural credits. Ms. Payne stated that there is another handout (See Attachment 5), previously distributed during the Accounting for Growth process, displaying a chart developed as an extrapolation of actual assessment results, which showed that 50-60% of the farms in Maryland would be able to meet the baseline and would be eligible to generate credits. The estimates were based on the results from various counties. Ms. Buhl asked about the level of participation by the agricultural community, and Ms. Payne replied that the numbers varied considerably among counties. Ms. Buchheister asked what the total amount of credits available would be. Ms. Payne stated that was unknown. A driver is needed to bring credits to the marketplace.

7. NEXT STEPS

Ms. Franke stated that, regarding next steps, the Draft Trading Manual will be finalized over the summer and MDE and MDA will be considering all of the submitted comments and comments received at the meetings. The finalized draft should be ready for review by the September

meeting. Other topics that will likely be discussed moving forward include the BRF proposal, Aligning for Growth Policies, and any further discussion regarding development of regulations. Mr. Fewell asked if the BRF proposal was being pushed to the fall for discussion within the committee, and Ms. Franke replied that was the intent.

8. UPCOMING MEETINGS

Locations: TBD, 1:00-4:00 pm.

Tentative Dates: September 22, October 17, November 14 or 17, December 12