

Maryland Water Quality Trading Advisory Committee
Meeting Summary
Maryland Department of Natural Resources, Annapolis, MD
March 21, 2016

Committee Members in Attendance:

Tom Ballentine	<i>NAIOP Maryland Commercial Real Estate Development Association</i>
Bevin Buchheister	<i>Chesapeake Bay Commission (Alternate – Ann Swanson)</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>
Candace Donoho	<i>Maryland Municipal League</i>
Jim Edward	<i>Chesapeake Bay Program Office</i>
Lisa Feldt	<i>Montgomery County Department of Environmental Protection</i>
Brent Fewell	<i>Earth & Water Group (Alternate – Alex Beehler)</i>
Patricia Gleason	<i>US Environmental Protection Agency, Region 3</i>
Lynne Hoot	<i>Maryland Association of Soil Conservation Districts, Maryland Grain Producers (Alternate – Lindsey Thompson)</i>
George Kelly	<i>Resource Environmental Solutions (Alternate – TJ Mascia)</i>
Kate Maloney	<i>Maryland State Builders Association</i>
Erik Michelsen	<i>Anne Arundel County Department of Public Works</i>
Shannon Moore	<i>Frederick County Sustainability & Environmental Resources Office</i>
Doug Myers	<i>Chesapeake Bay Foundation</i>
Dan Nees	<i>University of Maryland Finance Center</i>
Susan Payne	<i>Maryland Department of Agriculture</i>
Chris Pomeroy	<i>AquaLaw, Maryland Association of Municipal Wastewater Agencies, Maryland Municipal Stormwater Association</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>
Al Todd	<i>Alliance for the Chesapeake Bay</i>
Lisa Wainger	<i>University of Maryland Center for Environmental Science</i>
Sara Walker	<i>World Resources Institute</i>

Facilitator:

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

Ben Alexandro	<i>Maryland League of Conservation Voters</i>
Vimal Amin	<i>Maryland Department of the Environment</i>
Ray Bahr	<i>Maryland Department of the Environment</i>
Brian Clevenger	<i>Maryland Department of the Environment</i>
Michelle Crawford	<i>Maryland Department of the Environment</i>
James Deriu	<i>KCI Technologies Inc.</i>
Clay Detlefsen	<i>National Milk Producers Federation</i>
Brenda Dinne	<i>Carroll County Department of Land & Resource Management</i>
Jacob Dorman	<i>Contech Engineered Solutions</i>
Paul Emmert	<i>Maryland Department of the Environment</i>
Erik Fisher	<i>Chesapeake Bay Foundation</i>
David Foster	<i>Trading and Offset Workgroup</i>
Jim George	<i>Maryland Department of the Environment</i>
John Griffin	<i>Ecosystem Investment Partners</i>
Ridge Hall	<i>Chesapeake Legal Alliance</i>
Josh Hastings	<i>Eastern Shore Land Conservancy</i>
James Hearn	<i>Washington Suburban Sanitary Commission</i>
Christine Holmburg	<i>Maryland Environmental Service</i>
Steve Johnson	<i>Ballard Spahr LLP</i>
Virginia Kearney	<i>Maryland Department of the Environment</i>
Marya Levelev	<i>Maryland Department of the Environment</i>
Lori Lynch	<i>University of Maryland</i>
Bill Morgante	<i>Maryland Board of Public Works</i>
Dave Nemazie	<i>University of Maryland Center for Environmental Science</i>
Kerry Rexroad	<i>KCI Technologies Inc.</i>
Rachel Roman	<i>Eastern Shore Land Conservancy</i>
Phillip Stafford	<i>Maryland Department of Natural Resources</i>
Steve Stewart	<i>Baltimore County Environmental Protection Service</i>
Bob Summers	<i>KCI Technologies Inc.</i>
Rosewin Sweeney	<i>Venable LLP</i>
Joanne Throwe	<i>Maryland Department of Natural Resources</i>
Chris Trumbauer	<i>Hatcher Group/ Anne Arundel County Council</i>
Maggie Witherup	<i>Gordon Feinblatt LLC</i>

Action Items:

- Committee to send suggestions for discussion topics at the April meeting
- Committee to send suggestions regarding language changes to the Manual.
- Committee to continue to submit written comments, suggestions, and questions to facilitator

Meeting Minutes:**1. WELCOME & INTRODUCTIONS**

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

2. REVIEW OF THE FEBRUARY 22 MEETING MINUTES

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

3. REVIEW OF DRAFT TRADING MANUAL

Ms. Franke stated that the Committee had been asked to review Sections III and IV of the Draft Trading Manual. Since there were some comments shared by several Committee members who submitted comments, they were used as the focus for beginning the discussion. The topics included: additionality and the trading of Waste Load Allocations (WLA), eligibility of Municipal Separate Storm Sewer System (MS4) and agricultural credits, protection of local water quality, and clarification regarding the trading hierarchy.

Ms. Franke gave an example of one of the comments provided by the Chesapeake Bay Commission regarding additionality:

“The new trading regulations allow for localities with MS4 permits to meet up to one-half of their 20% restoration requirement through nutrient trading. At the last meeting (February 22) we learned that localities with MS4 permits can purchase reductions of nitrogen or phosphorus, or “credits,” from wastewater treatment plants to meet their permit terms. The purpose of MS4 permits is to increase the pollutant reductions from stormwater to meet the Bay Total Maximum Daily Load (TMDL). Their purpose is to create additional reductions, but if MS4’s simply purchase reductions which already exist and for which the state is already receiving credit under the TMDL, the trade will produce no additional reductions and will not move us any closer to meeting the TMDL.”

Mr. Michelsen asked, regarding the Watershed Implementation Plan (WIP), if it assumes loading from the Waste Water Treatment Plants (WWTPs) is equivalent to the current permit discharge limit, and if so, what the assumed reduction is. Mr. George replied that the WWTP have an allocation, however, when they upgrade they will be below their allocation. It is projected that by 2025, WWTPs will be 2 million pounds below their allocation but also expect the excess allocation to be consumed through population growth in the following decades. Mr. Michelsen asked if WWTPs would still be below the permit threshold if the state is not accounting for all of the reductions. Ms. Moore stated that everything has been laid out in the 2008 Cap Strategy which states that as of April 17, 2008, the permit limits stand, which include additionality. Credits can be then generated from optimizing treatment operations or maintaining flow which is

less than the design. Mr. Nees stated that, if the state has already taken the additionality in to account, then what is being traded is growth (i.e. trading to maintain the cap, not to reach the cap). Ms. Moore stated that it depends on how the trades are conducted. The local governments that have improved their WWTPs by completing the upgrades have allowed for additional capacity. The permits include the credits for the capacity and performance built into the future loads. The understanding is that local governments would be able to trade both types of credits.

Mr. Michelsen stated that a trade between the stormwater (SW) sector and wastewater (WW) sector potentially threatens the ability of the WW sector to accommodate new growth. Ms. Swanson asked how it would be made sure that the SW sector understands that credits will not be available over time through trading. Mr. Pomeroy stated that the local government who would be affected should be aware of the issue because they are the owners of the assets and permits. There is a timing component, which is key. Ms. Swanson stated that right now there are additional reductions within the capacities that have not been factored in to the reductions that Environmental Protection Agency (EPA) is measuring in Maryland. Mr. Pomeroy stated that the reductions have been factored in and have been budgeted in the WLA. By staying below the budget, the credit is created. Ms. Moore stated that discussions have been held with the Maryland Department of the Environment (MDE) regarding limits being placed on trades over time. These limits would require a minimum percent restoration over the current permit cycle to continue to gain new restoration. It is more of a scheduling issue but does not remove the restoration requirement. Ms. Feldt stated that the challenge of the 5-year permit cycle is the issue that needs to be addressed. It is a short-term trade until the 20% restoration is met. Mr. Nees stated that using WWTP credits could be viewed as similar to purchases on the spot market.

Mr. George stated, regarding credits generated by the WW sector, that there is a distinction between a performance credit and a capacity credit. Real reductions can be created by performing better at the WWTP versus having unused capacity. Ms. Moore stated that the concept of additionality was established at the time of the WWTP upgrades. It does not make sense to offer something to the local governments and then take it away. Ms. Gleason asked if the performance credits were a part of the manual. Mr. George stated that the manual describes both types of credits and both are allowed to be used. Ms. Franke stated that the general consensus from the group is that more clarifying language in the manual is still needed on this topic.

Mr. George stated that there is still a policy question that will need to be discussed regarding capacity credits. It was observed in Pennsylvania that because there were so many credits available in the market, the price of the credits dropped and priced out those credits that were generated from other sources through real reductions. Pennsylvania no longer allows capacity credits. Mr. Pomeroy stated, regarding crediting and capacity, that there is a capacity challenge

in the MS4 permits. The important metrics, or numbers, in this discussion regarding credits is the MS4 demand to fix the scheduling challenge. Either there will be enough credits in the system to accommodate purchasing up to half the restoration goal or there will not. The limiting factor is the draft policy that restricts the purchasing ability of MS4s to half of the 20% restoration goal. However, there is also a need to make sure that supply is there.

Ms. Wainger expressed a concern regarding the language used for credits not being approved for the idling of whole or substantial portions of farms, which is very vague. Ms. Payne noted that Ms. Wainger omitted the remainder of the language which refers to land conversions for the sole purpose of generating credits. She further stated that the manual is purposefully vague to be able to look at farms on a case-by-case basis to provide flexibility and because of Maryland policies promoting the preservation of prime and working farmlands. Ms. Wainger maintained that stating in the manual how the farms would be judged would be helpful. Ms. Payne noted that it is specifically dealt with in the regulations and that location, soil, and slope are some of the major factors in the determinations and are also reflected in the calculation tool. Ms. Connelly stated that there should be specific emphasis in the document for conservation of food production. Mr. Todd stated that there needs to be more clarity for the terms “substantial” and “productive,” and the process used to evaluate and make the determination. Mr. Tassone asked if taking land out of production that does not inherently have much capacity to reduce pollutant loads would, therefore, not generate a significant amount of credits. Ms. Payne stated that was likely. The soil determination is based on the farm map and RUSLE (Revised Universal Soil Loss Equation) numbers. The calculation tool also takes in to account the NRCS definitions of Best Management Practices (BMPs). Mr. Tassone stated that the tool will provide some incentive in the credit generating market to not waste productive land. Ms. Wainger suggested clarification be provided in the manual regarding what is likely to be acceptable for the idling of farmland.

Ms. Gleason stated that the EPA had some questions pertaining to meeting the 20% restoration requirement by using trading. EPA is interested in how local water quality will be addressed. Ms. Franke stated that there were many comments received about the protection of local water quality through the trading hierarchy.

Ms. Connelly stated, on page 46, there was a mention that to participate in the program the landowner and operator would have to waive all confidentiality of their nutrient management and other plans. The feedback received from farmers is that they will not participate if they have to waive all of their confidentiality to participate. Mr. Nees stated that the trading program is voluntary. Mr. Shreeve stated that it should be recognized that the money being used is from public funds, which will be open to a Public Information Act (PIA) request for any documents that are part of the trade. Ms. Connelly stated that the Nutrient Management Plan (NMP) is required by law and regulated by the Maryland Department of Agriculture (MDA). Mr. Shreeve

stated that MDA needs to be the certifier of the credits and responsible for the legitimacy of the credits, especially if they will be the only entity allowed access to the farmers' information.

Ms. Payne stated that since the credits will be used to fill the needs of permits, it is necessary to have the information be public. Thus far, farmers have not objected to sharing the farm summary, which is created by the trading tool. MDA does not make any effort to publicize the documents, but they would be able to be requested through the PIA. The farm summary, which is created from the NMP, Soil and Water Conservation Plan (SWCP), and waste storage plan, has all of the same information in a much more readable document. Mr. Tassone stated that the manual should, instead, state that the confidentiality of the farm summary needs to be waived. Ms. Payne stated that the other documents are submitted to MDA as back-up information would be subject to PIA requests. The permitting process is the reason why confidentiality needs to be waived for all of the documents. Mr. Nees stated that this issue would be categorized as a transaction cost, and eventually the price will increase until the benefits of the program outweigh the confidentiality issue. Those first farmers who do participate in trading will be able to show the program works and create confidence in the system over time. It is supposed to be a free market system, and Mr. Nees advocates its use as a free market. Ms. Wainger suggested that there could be an option to change the level of disclosure.

Ms. Moore pointed out, in Section 3 on pages 32 and 36 regarding MS4 eligibility and trading baselines, that the manual states that local governments can trade only if no outstanding permit violations exist. Ms. Moore would like that to be removed because trading can be used as a way to remove the permit violation and obtain compliance. It is important to note that MS4 permits are heavily regulated and that language in the manual is not needed to force local governments to comply. Ms. Feldt stated that language on page 32 seems to be contradictory and needs clarification:

“...if no outstanding permit violation exists and the jurisdiction demonstrated to MDE that it is working towards meeting all other requirements of its permit.”

A meeting attendee requested that the comments submitted by Mr. Horstman regarding this issue be included. Ms. Franke read the comments provided by Mr. Horstman:

“A regulated MS4 jurisdiction may not sell or exchange credits until it has met the full permit impervious area restoration, is working toward all other requirements of the permit, and has no outstanding permit violations.” It seems to me that trades should not be allowed until the permit is fully implemented and complied with. How will this be enforced? Have any MS4 jurisdictions been able to hit their impervious surface reduction goals? That section also states that they will not be able to acquire credits.”

Ms. Moore stated that the language is an artifact of an earlier approval process that needs to be moved beyond in order to participate in the trading market. Ms. Moore stated that there is clash between what MDE and EPA, as well as language in the Chesapeake Bay TMDL, allow for alternative practices and the debate is far from settled. Ms. Feldt stated that if the fundamental premise is that MS4s cannot trade until the 20% restoration goal is met, then MS4s are not buying a short-term trading construct. Mr. Clevenger stated that the language which speaks to violations is similar to that in a WWTP violation; if a WWTP is in violation of its permit then there will be restrictions on trading. It is understood that there are ongoing programs that are required over the permit term. The verb “exchange” is probably misplaced. The idea of meeting the 20% restoration goal before trading can occur was meant for selling of credits, not buying. A separate discussion needs to be held with regard to wholesale violations.

Mr. Nees stated that the State is being held accountable by the WIP. Mr. Myers agreed and stated that “good standing” is something that MDE can make the call on. The question is if the Committee trusts MDE to make that call on local governments when it comes to MS4 trading. The same type of risk goes for MDA in dealing with the agriculture sector for not releasing the NMPs and if there is a surrogate for the certification. Through agricultural certainty there is a way to set a baseline and have all parties involved agreed that an entity is ready for trading. Ms. Moore stated that there is already an appropriate level of oversight, but what is needed is to make sure all of the requirements are met without overbearing oversight. Mr. Pomeroy stated that the WW sector is taking a very large risk if the policy states that when any unrelated violation occurs the WWTP would be disqualified from the prior trading contract. Mr. Pomeroy recommended removing the double compliance for trading to move forward. Mr. Nees stated that it is very clear that local water quality cannot be violated. If the local government can demonstrate to MDE that their local waters are protected as part of their permit, then they should be eligible in some way to trade.

4. LOCAL WATER QUALITY

Mr. George of MDE gave a presentation on trading to meet MS4 responsibilities for nutrient and sediment reductions to the Chesapeake Bay. Please refer to Attachment 2 for a copy of the presentation.

Mr. George stated that the 10/10 policy means that 10% of the restoration will come from impervious cover treatment while the other 10% will come from trading. Ms. Gleason asked regarding meeting the restoration requirement, when the BMP’s are chosen to generate credits in a local watershed, will there be any determination of how much of the local water quality restoration would be met. Mr. George stated that at this stage, no. The presentation addressed the local water quality question within the MS4 context generically, but there are those within Maryland who currently have a specific permit. How to transition from the permit to a broader

policy the Committee may decide upon would have to be investigated. Mr. Nees asked if it were assumed that the 10/10 policy would apply generically to all of the jurisdictions. Mr. George stated that it would apply to all of the jurisdictions. Mr. Nees asked for clarification on the idea of pace and MS4 trading. Mr. George replied that the local governments are being given the requirement to generate a restoration plan for all pollutants and to state when they will meet the goals. That plan timeframe will be incorporated into the permit. The pace is determined through a planning process by the local government, which is reviewed by MDE. This process is occurring whether or not the trading program comes to fruition.

Ms. Wainger asked, regarding prioritizing local purchasing, if there are local credits, but they are not as cheap as credits which are farther away, would the local priority always apply. Mr. George replied that at this stage the prioritization has been laid out as a guideline, not a rule. Ms. Wainger stated that the more uncertainty exists and the more that is at the discretion of MDE, the more likely it would be that potential participants would be deterred from trading. A balance needs to be found in detailing clear guidance. Mr. Clevenger stated that Ms. Walker had provided language for moving up and down in the geographic priority list. Ms. Walker stated that clarifying language was added, regarding moving up the tiers, but more guidelines are needed to determine if all the possibilities have been exhausted. Mr. Clevenger stated that it had been suggested to remove the geographic restrictions.

Mr. Michelsen stated that other guidelines may not be necessary since it has already been stated that it is the Bay TMDL that has to be achieved by 2025 although there is an expectation that the local TMDLs will be fulfilled as well. Ms. Payne stated that it is anticipated that there will be some political pressure to purchase credits within local jurisdictions. Ms. Moore stated that there is a difference between trading for restoration versus trading for mitigation and suggested self-regulation. Mr. Pomeroy recommended striking the local water quality criteria for temporary trading loads and saving the trading hierarchy for permanent land use conversions and land development offsets. Ms. Feldt stated that it is determined if progress is being made towards the local TMDL, but it is unclear if the local trading preference is needed. Mr. George stated that the local preference is partially taken care of by the first 10%. Mr. Pomeroy stated that the 10% is insisted upon locally, while the other 10% can be managed by any other trading options allowed. Mr. Pomeroy suggested setting a state minimum for everyone. Mr. Myers cautioned the group about two items; a lack of assimilative capacity and that currently there is no offsetting growth. It may not be fair to have the same ratio apply across all jurisdictions. Ms. Swanson asked about the 10% (acreage) versus the pounds that apply to the TMDL. Mr. George stated that the translation between the two is provided in the manual.

5. LOCAL GOVERNMENT APPROACHES

Mr. Pomeroy stated that there is a permit paperwork issue on page 35 in Section 3. The existing load reporting on certified discharge monitoring reports already should be sufficient for proving

that WWTP reductions are real and urged the Committee to not apply permit modifications. Clear and upfront rules are encouraged.

Ms. Franke asked if there were any comments on transparency and the public comment process. Ms. Wainger stated that the prioritization of where reductions are needed most should occur, along with verification that the reductions produced as a result of a trade are real. If there are sources of information (i.e. discharge monitoring report) it could be used for verification. Mr. Michelsen stated that another process does not need to be created, and the current documentation should be sufficient for establishing the credibility of the reductions.

Ms. Moore stated, on pages 33 and 34 the tables showing impervious area restoration obligations are based on old MS4 permits. It should be noted that new numbers have been submitted by some jurisdictions and the manual should be updated to reflect the new numbers.

Mr. Pomeroy asked what the thought process would be for allowing the Phase II jurisdictions to participate in trading. Mr. Clevenger replied that there is a 20% backstop for the two general permits that have been drafted. Mr. Pomeroy asked if MDE had a general number of how much impervious acreage would be in Phase II districts. Mr. Clevenger stated that the acreage is a lot less than Phase I, but it is not insignificant. Mr. Nees estimated possibly 20% of the Phase I impervious area.

Ms. Moore stated that on page 34 there are average statewide loading rates for nitrogen, phosphorous, and sediment in forests and impervious areas. The reason for this inclusion is because the standard for alternative practices, as stated in the manual used for generating stormwater restoration credits, requires the restoration of the difference between an impervious acre and a forest. Ms. Moore asked if this would be an idea that would hold true statewide or would local factors be taken in to account. There are edge-of-stream numbers in use, but the credit market is based on delivered credits. Mr. Bahr stated that general Baywide state numbers were used to obtain a level of consistency throughout all of the permits in the ten jurisdictions. Ms. Moore stated that if credits are being bought from the market are based on a 50% delivery ratio and compared to edge-of-stream, then twice as many credits will need to be purchased. Ms. Moore encouraged taking a closer look in to the delivery ratios in terms of the specific watershed basin, otherwise there is a possibility for market distortions. Ms. Payne stated that there are different types of credits that must be dealt with (i.e. delivered and edge-of-stream) to be able to account for with areas of low to zero delivery ratios. The tool calculates credits both ways. Ms. Moore recommended not being overly simplistic when discussing the tool in the manual. Ms. Payne agreed and stated that the tool calculates credits by the basin, not statewide average. Mr. Bahr cautioned the Committee on the unintended consequences of not using the state average due to calibrations and monitoring which are occurring in the jurisdictions. The model would

cause the jurisdictions to be widely different in terms of the amount of restoration, and the complexity of the model would be increased.

Mr. Myers asked if there is a tidal segment with a delivery ratio of 1 trading for a credit that is upstream with a delivery ratio of 0.5, does there need to be enough credits generated to equal the same load reduction in the tidal segment. Ms. Swanson stated that would then encourage buying locally, if possible. Mr. Bahr stated that there could be a delivery difference between two counties. The models are very large with the best data and science available, but there are still assumptions being made. The model will be re-calibrated in 2017 based on the most recent data. Regarding MDE issuing permits, having a number that changes over time complicates the process and that is why the particular method to span the entire state was chosen. Ms. Moore asked if someone would be buying edge-of-stream credits or delivered credits to satisfy the requirements. Mr. Bahr stated that it is a difficult decision, and MDE is trying to relate imperviousness requirements back to the Bay model. MDE welcomes suggestions and ideas for improving the process. There are difficult decisions that have to be made by local governments trying to maximize credits for both the local and Bay TMDL. Mr. George stated that what is being discussed are a few separate issues, one is whether or not to use the average state number, and the other is whether or not edge-of-stream or delivery credits. The state average could be used with either of the credit types. Ms. Payne stated that the tool has three trading zones, which use five different loading rates.

Mr. George asked Mr. Pomeroy if there was a process to address the MS4 issues without changing the permits. Mr. Pomeroy replied that the most important aspect is the guidance manual as the key governing document to answer these types of questions. On the credit supply from the WWTPs, it is based on math and reports that are already provided to MDE. The only piece missing is the operating rules, which can be decided by the Committee to include in the guidance manual. It is an accounting issue; credits will be produced based on performance levels. The trading partner of the MS4 can look at the data, work with the guidance tables (ex. page 34), and make forecasts and reasonable contracts. It is a data-driven approach on the existing permits.

6. MDE UPDATES

Ms. Buhl gave an update on MDE. The Maryland Court of Appeals ruled favorably on the appeal of the Phase I MS4 permits. MDE is pleased with the endorsement of the process. There is still a lot of uncertainty with MS4 compliance but one area of uncertainty has been eliminated. The EPA has a concern regarding the permits: as they are written they would not allow for trading. MDE will be moving forward with discussions to determine the next steps for the nutrient trading program.

7. APPROACHES FROM AGRICULTURE

Ms. Connelly stated that there should be some way to provide assurance to farmers that they would not be impacted if the load reduction baseline is moved after the credits have been sold. There are farmers who are skeptical because the baseline could move at any time, and there is skepticism, especially from those who rent land. Mr. Michelsen stated that what is being discussed is the shifting of the urban load to agriculture, which does not remove the agricultural reductions but drives up the cost. There should be money provided by the State agricultural sector to help the agricultural community achieve the load reductions. So far the burden has not been taken away from the agricultural sector. Ms. Connelly stated that currently there is no protection in agricultural certainty. Mr. Michelsen stated that there is also a separate issue of the agricultural sector reductions that the State is currently asking for. Ms. Thompson stated that the concern is for changes that occur within the Chesapeake Bay Program and recalibration of the model. There is a moving target when it comes to meeting the agriculture sector's assigned load reductions. Mr. Nees recommended grandfathering the entire agricultural sector. For example, once a credit is sold, a new way to generate the credit would not be needed because the credit was already generated by an implemented practice. Ms. Connelly asked how EPA would deal with the issue of waiting for grandfathered credits to expire. Mr. Nees stated that the State is responsible for meeting the WIP and would be responsible for any shortfall. Ms. Payne stated that there was a proposal where all or a portion of credits sold by the agricultural sector would reduce the overall allocation to the agricultural sector.

Ms. Thompson stated that there might be some confusion between the definitions of allocation and load. Ms. Connelly stated that allocation refers to how many pounds coming from the specific sector that are allowed in to the Bay. Ms. Franke stated that the general consensus is the farmers would like more assurance in the program and that the State will stand behind the credits. Mr. Nees suggested rewarding the farming community for taking the risk by using the trading program. A meeting attendee stated that a credit can be grandfathered once it is sold, but the facility itself would not be grandfathered and would eventually be subject to the new reductions. Mr. Myers stated that every time there is a transaction there are credits retired and asked if the retired credits could be assigned to a specific sector for the good of the Bay. Ms. Connelly stated that the initial concerns that have come up have been eased by the use of the trading tool. Ms. Thompson stated that some of the initial farmers who used the trading tool have concerns related the management practices that are currently in use. After using the tool, it was shown that some farmers would not be able to generate credits because the baseline has been met through exceptional management of their land. Ms. Payne stated that if the farmers remove annual practices (for example, cover crops) and are still under the baseline, then credits could be generated. Ms. Connelly asked if there was anything that would allow the purchaser of credits to buy credits in order to become above the baseline. Mr. Nees replied yes, but the cost or the regulated credit would be increased. Ms. Thompson stated that until there is certainty for the

program, the agricultural sector will be skeptical. Ms. Connelly suggested regional meetings and outreach to get the farmers involved.

Mr. Mascia stated that some of the uncertainty and concerns in the agriculture sector can be solved with an aggregator. The aggregator will remove the market uncertainty by paying the generator for the credit and taking over the risk. Ms. Thompson asked about the rented land issue between the landowner and operator regarding the intent to not take productive land out of production. Ms. Payne stated that most rented farmland is based on an agreement by a handshake. What is envisioned is a regularization of these transactions, which would lead to a more formal lease agreement. The agricultural certification regulations accommodate an operator who has the permission of the landowner to sell the credits. Some sort of legal agreement would be required to sell the credits. MDA does not want to write leases and contracts due to the legal liabilities, but will be able to provide contract and lease requirements for those who are interested.

Ms. Swanson suggested modifications to the manual regarding food producing lands. Ms. Connelly requested that food production be put at the top of the list. Ms. Payne stated that silviculture is considered a farming practice and the trading tool will assess Christmas trees and nursery stock as well. Aquaculture is not currently a recognized BMP but it is being investigated. Mr. Pomeroy proposed the creation of an adaptive management program to be included in the manual. Currently, Virginia point sources have to use adaptive management for the State when the Bay Program causes changes to the delivery factor in the Bay model. Virginia has incorporated a phasing program to deal with these changes. This phasing concept for annual practices could help some entities cope with any changes. Mr. Mascia stated that the credit needs to be certified for the life of the credit and have some assurance that it will not change. Ms. Payne stated that once the credit is sold, it is covered by contract law and will be guaranteed for the life of the contract. Mr. Mascia expressed a concern with a credit that has been generated and any changes that would occur while it sits on the market. Ms. Payne stated the farm would have to be re-run through the calculation tool to obtain the new credit numbers when the model updates, but that most of the time credits are generated with a buyer in hand so they will not be on the market for very long. The tool will always be dynamic and reflect the latest version of the model. Ms. Buhl suggested that Committee members provide language regarding the suggestions from the meeting.

8. PUBLIC COMMENT

Mr. Myers requested clarification regarding the use of “marketplace” and “registry” in the manual on page 38. Ms. Payne stated that the marketplace is where the credits are posted for availability of selling and advertised for buying, but the trade would not be conducted in the marketplace. When the credit is entered into the registry is when all the public rules would go in to effect. The registry is also where the tracking of trades occurs. The registry and the

marketplace are two components of the same platform. Mr. Myers suggested that the language in the manual should reflect this explanation.

Mr. Todd asked, regarding the verification of agronomic practices under agriculture, if annual practices are calculated through the model, does the verifier have to verify all of the practices that are included in the calculation. Ms. Payne replied yes, and stated that cover crops are verified twice, once for verification of the planting of the cover crops and once for the verification that the cover crop was successful. Mr. Foster asked if Phase II jurisdictions would be able to trade with farmers. Ms. Moore stated that has been envisioned, but is not set in stone since the permits have not been issued. Mr. Clevenger stated that counties that are not regulated by MS4s would be free to trade. The districts and facilities that are subject to general permits are still being discussed, but there is an understanding that flexibility will be provided to Phase II jurisdictions. Currently the only requirement is 20% restoration. Ms. Levelev asked what type of process is being envisioned for having trading parties find each other for those that are not posted on the marketplace. Ms. Connelly suggested aggregators. Ms. Payne suggested that soil conservation districts, which have offices in every county, could provide information regarding the market.

9. NEXT STEPS

Ms. Franke asked the Committee for suggestions for agenda items for the next meeting and reminded the Committee of the goals (i.e. transparency, accountability, flexibility). Suggestions regarding language for the manual or any other comments can be sent to Ms. Franke, Ms. Buhl, Ms. Levelev, or Ms. Payne. A table of the comments received so far was distributed to the Committee, and Ms. Franke reminded the group that it is a working document. Ms. Franke asked if there was any subject that was not discussed that should be discussed at the next meeting. Mr. Myers suggested discussing what goes in the guidance document versus what should be a regulation.

10. UPCOMING MEETINGS

The next meeting will be held on April 21 at the Maryland Department of Environment, 1800 Washington Blvd, Baltimore, MD 21230, Lobby Conference Rooms; from 2:00 to 5:00 p.m.