

Maryland Water Quality Trading Advisory Committee  
Meeting Summary  
Maryland Department of Agriculture, Annapolis, MD  
June 15, 2017

**Committee Members in Attendance:**

|                  |  |
|------------------|--|
| Tom Ballentine   | <i>NAIOP Maryland Commercial Real Estate Development Association<br/>(Alternate – Rosewin Sweeney)</i>   |
| Patty Bubar      | <i>Montgomery County Department of Environmental Protection</i>  |
| Lynn Buhl        | <i>Maryland Department of the Environment</i>  |
| Valerie Connelly | <i>Maryland Farm Bureau</i>  |
| Patricia Gleason | <i>US Environmental Protection Agency, Region 3</i>  |
| Mark Hoffman     | <i>Chesapeake Bay Commission</i>   |
| Les Knapp        | <i>Maryland Association of Counties</i>  |
| Erik Michelsen   | <i>Anne Arundel County Department of Public Works</i>  |
| Doug Myers       | <i>Chesapeake Bay Foundation</i>   |
| Dave Nemazie     | <i>University of Maryland Center for Environmental Science</i>   |
| Susan Payne      | <i>Maryland Department of Agriculture</i>  |
| Chris Pomeroy    | <i>AquaLaw, Maryland Association of Municipal Wastewater Agencies,<br/>Maryland Municipal Stormwater Association (Alternate – Lisa<br/>Ochsenhirt)</i> |
| Mindy Selman     | <i>USDA Office of Environmental Markets</i>  |
| Rob Shreeve      | <i>State Highway Administration</i>  |
| Phillip Stafford | <i>Maryland Department of Natural Resources</i>  |
| Al Todd          | <i>Alliance for the Chesapeake Bay</i>   |

**Facilitator:**

Kathy Stecker

**Other Attendees:**

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| Ben Alexandro     | <i>Maryland League of Conservation Voters</i>                             |
| Matt Clyget       | <i>Maryland Department of the Environment, Office of Attorney General</i> |
| Jeff Corbin       | <i>Restoration Systems, LLC</i>   |
| Michelle Crawford | <i>Maryland Department of the Environment</i>                             |
| Clay Detlefson    | <i>National Milk Producers Federation</i>                                 |
| Sam DeWitt        | <i>Chesapeake Bay Foundation</i>  |
| Brenda Dinne      | <i>Carroll County Department of Land &amp; Resource Management</i>        |
| Jacob Dorman      | <i>Contech Engineered Solutions</i>                                       |
| Michael Forlini   | <i>Clean Chesapeake Coalition</i>   |
| Andrew Grey       | <i>Maryland Department of Legislative Services</i>                        |

|                    |   |
|--------------------|---|
| Ridge Hall         | <i>Chesapeake Legal Alliance</i>                              |
| James Hearn        | <i>Washington Suburban Sanitary Commission</i>                |
| Christine Holmburg | <i>Maryland Environmental Service</i>                         |
| Steve Johnson      | <i>Ballard Spahr LLP</i>                                      |
| Jason Keppler      | <i>Maryland Department of Agriculture</i>                     |
| Marya Levelev      | <i>Maryland Department of the Environment</i>                 |
| Julie Pippel       | <i>Washington County Division of Environmental Management</i> |
| Sonal Ram          | <i>State Highway Administration</i>                           |
| Greg Sandi         | <i>Maryland Department of the Environment</i>                 |
| Hans Schmidt       | <i>Maryland Department of Agriculture</i>                     |
| Gary Setzer        | <i>Maryland Department of the Environment</i>                 |
| Jennifer Smith     | <i>Maryland Department of the Environment</i>                 |
| Ed Stone           | <i>Maryland Department of the Environment</i>                 |
| Bob Summers        | <i>KCI Technologies</i>                                       |
| Maggie Witherup    | <i>Gordon Feinblatt LLC</i>                                   |

### **Action Items:**

- The Committee is to send comments and language regarding the draft regulations to MDE by July 7<sup>th</sup>.
- MDE to distribute a word document of the draft regulations.

### **Meeting Minutes:**

#### 1. WELCOME & INTRODUCTIONS

Ms. Stecker welcomed the meeting attendees, and everyone introduced themselves.

#### 2. REVIEW OF THE MAY 1 MEETING MINUTES

Ms. Stecker asked the Committee members for corrections or comments on the May 1 meeting minutes. Mr. Knapp stated that there was an extra "i" on page 2, in "Legislative Updates". Ms. Buhl stated that on page 9, Aligning for Growth is discussed "The Critical Areas Commission stated that within any critical areas in any given county, they have developed a growth allocation for that purpose". The sentence should be rephrased to state "The representative of the commission explained that they have developed a growth allocation within the Critical Area of any county". The minutes were approved as revised.

#### 3. DRAFT REGULATIONS/TRADING MANUAL

Ms. Buhl stated that the Maryland Department of the Environment (MDE) has been working on the draft regulations for the past few months. The regulations are purposely less detailed than the trading manual; language was pulled from the trading manual, the Virginia regulations, and a proposal sent by Doug Myers, Bevin Buchheister, and Jeff Horstman. While there is less detail to allow for changes without having to change the regulations, there is a need for certainty and

enough of a framework for the system to have credibility. A policy decision was made to currently limit the trading to nitrogen, phosphorous, and sediment. MDE added a section on credit generation by unregulated nonpoint source (NPS) sectors. All Best Management Practices (BMPs) implemented for the generation of credits would have to be approved by the Chesapeake Bay Program expert panels. In addition, the existing permitting and agricultural certification processes would be used for ensuring approval, inspection, maintenance and enforcement of credit generating practices. The goal is to publish the regulations sometime this summer. Comments can be submitted through July 7; there will be other public comment opportunities as well during the review process.

The committee members were each given a chance to discuss their impressions of the draft regulations and to voice any comments or concerns. Ms. Selman stated that the regulations used “Total Suspended Solids” as the parameter for sediment with the understanding that it is a concentration expressed as mg/L. Ms. Selman stated that the use of “Total Solids” may be a better option. Also, the definitions do not succeed in distinguishing “offset” from “credit”; clarification is needed. Mr. Michelsen stated that the overall framework is a good start. There are a couple of key items which should be raised regarding the declaration that Waste Water Treatment Plants (WWTPs) to Point Source (PS) trades would have to be embodied in the WWTP’s permit. This is an unnecessary and cumbersome step. Mr. Michelsen also asked why there would be an enumeration on Page 16 regarding credits associated with converting on-site septic systems when the science could advance, changing the numbers, which would then be embedded in the regulations.

Mr. Todd stated that there was a concern regarding how the PS trading allocations and baselines will eliminate the use of a trading program, or whether or not there are other options to the approach that is being taken to facilitate a staged trading program. The framework may not provide an adequate demand to test its implementation. Another concern is whether or not the trading regulations should be open to all potential practices within the Chesapeake Bay model; this may be a question for the trading guidelines. Ms. Buhl asked how additional practices would be accommodated and used aquaculture as an example. Mr. Todd stated that another question would be if practices carried equal weight in terms of verification. There may be a need to look at a tiering of practices. Ms. Payne stated that all of the practices approved by the Chesapeake Bay Program are potentially eligible to be included. Oyster aquaculture has been through the Chesapeake Bay Program peer review process; it is a question of how the practice would be traded rather than if it is eligible or not. Mr. Todd stated the concern is whether or not all practices should be eligible. Ms. Buhl stated there should be some type of threshold that a proposal would need to meet.

Mr. Pomeroy stated that integrated planning is being implemented to meet the objectives as smartly and cost effectively as possible; cross sector trading is an integrated planning enabler.

The draft is being investigated from the perspective of searching out any constraints which could be an impediment to cost-effective, integrated planning at the municipal level. The WWTP permit modification is one such constraint, as well as the ability to move forward with the program on a practical schedule for the different permits required for local governments. Mr. Knapp stated that there is a concern regarding the inclusion of the modification of the WWTP permits to conduct a PS trade.

Mr. Nemazie stated that there was difficulty with reading the regulations while envisioning the manual. Regarding Section 10 on acquisition of credits by non-regulated sources and the verification therein, in Section C, Mr. Nemazie expressed concern regarding numbers 1 and 2 on page 16. Number 1 refers to the Maryland Chesapeake Bay Facility Assessment Scenario Tool (BayFAST) which is a standard tool, while number 2 seems very open. Ms. Buhl stated that MDE is open to suggestions. Mr. Nemazie stated that the openness could allow for the implementation of a new mechanism in the interim when there is a lapse in time while the mechanism is run through BayFAST. Ms. Payne stated that while the section deals with NPS, it also deals with agriculture, and the agricultural tool is not listed. Ms. Buhl stated that there may be a better way to write the language to encompass the necessary tools.

Mr. Hall asked for clarification of what the BayFAST tool is. It was stated that BayFAST is a tool which the US Environmental Protection Agency (EPA) had created to allow users to develop scenarios with various BMPs in order to estimate load reductions. It currently is based on the Phase 5.3.2 Model, but in the future, it will be adjusted to the Phase 6 version of the Model. The difference is the input screens and the level of localization. Mr. Hall asked about the relationship of the BayFAST tool and the Nutrient Tracking tool. Ms. Payne replied that they are not the same: the Chesapeake Bay Nutrient Tracking/Trading Tool (CBNTT) is available for use by the States in the Chesapeake Bay watershed, and there is a Maryland-specific tool for the calculation of credits using a different methodology (i.e., site-specific, farm-scale) that is calibrated to mimic the Chesapeake Bay Model. Ms. Gleason added that the EPA and US Department of Agriculture (USDA) have been working in parallel with BayFAST and the CBNTT to understand the similarities and differences between the tools to be able to adjust to additional sensitivities and other information so the results can match up. Ms. Selman stated that the Nutrient Trading tool has more sensitivity to things such as rates of application, soils, weather, etc., of a specific site while BayFAST treats a segment uniformly. This is why, for the Maryland program, a specific version of the CBNTT was used to capture site-specific variability.

Ms. Gleason stated the EPA is very supportive of the regulations and will provide comments on them to make sure they match with the Clean Water Act (CWA). Ms. Gleason asked if the policy manual is going to move forward and be finalized and when changes happen, how will change happen (e.g., public comment forum). Ms. Bubar stated that having regulations in place for a trading program is very important. There are assumptions made regarding modeling and

calculations and Ms. Bubar asked if the regulations are stated in a way that is understood across jurisdictions and recommended defining more terms or having more references to the manual. Ms. Buhl stated that if there are items in the regulations which should be in the manual or vice versa, MDE is open to suggestions. Mr. Hoffman stated that the introductory sections of regulatory proposals are supposed to provide background information that allows the reviewers to assess the proposal; the current introductory material is currently lacking (i.e. the comparison of federal standards, the EPA technical memorandum related to trading). The proposal should assess the extent to which the regulations comport with the guidance, and if they do not, then why. The economic impact should be described in some detail or even benchmarked. There could be a different approach used to discuss the broad concepts (i.e. enforcement, certification, verification, local water quality protection, uncertainty, credit calculation, baseline calculation, etc.) separately and lay out the framework standards individually.

Ms. Connelly asked if the latest version of the manual is available or if it would be released after the regulations. Ms. Buhl stated that Committee has the most current manual; an updated manual would be released after the regulations. In addition, there were concerns that the definition for the uncertainty ratio was placed in the regulations, but that there was no other location which mentions the uncertainty ratio. Ms. Sweeney stated, from a drafting standpoint, that there may be a contradiction: (7)(A)(3) states that WWTP facilities have to demonstrate that they have actual rights to credits, while other parts of the regulations (4)(B) states that general regulated persons have to have a permit that authorizes a trade before credits can be purchased, and (8)(A)(1) states that MS4s need permits to authorize trades. Development and processing a permit takes time and an entity would want to ensure that the credits are available.

Mr. Myers expressed disappointment about the inclusion of capacity credits. Mr. Myers reiterated that the trading geographies still allow trades between the Eastern Shore and the Western Shore, which is inappropriate. Mr. Myers stated that there is confusion in a lot of sections because of a lack of necessary detail; the regulations could have been better understood if there had been referencing of specific sections in the manual. There is also very little detail regarding the trading ratios in the manual and in the regulations. Public participation is lacking; the public should have a chance to comment. The verification of generated credits and enforcement and citizen appeal of approval should also be included in the regulations. Mr. Stafford stated that the capacity credits would not add anything to the reductions. Mr. Shreeve stated that the regulations limit the MS4s to purchasing credits. There will be times when MS4s may purchase temporary credits and may not need them for the full term; there may be value in re-trading to another MS4. There is an opportunity for MS4s with adjoining boundaries (i.e. across the stream) to trade across those boundaries. Ms. Payne stated that there was a concern that Section 5 in the trading manual, which deals with the mechanics of trading, was not reflected in the draft regulations. The reference to a market-based program was only mentioned in the section dealing with agricultural credits. This is a voluntary, market-based program, which

should be stated somewhere. Ms. Payne also observed that the separate markets for the three pollutants are not in the regulations and further recommended the inclusion of the pricing (negotiated by the buyer and seller) and the infrastructure provided by the State. Similarly, aggregators and brokers are only mentioned in the definitions and there should be more explanation elsewhere in the regulations, as well as possible requirements for insurance or bonding and compliance and enforcement.

Ms. Stecker then asked the Committee for comments regarding specific sections of the draft regulations.

#### *Section 4: Eligibility*

Mr. Myers asked for clarification regarding the two types of eligibility. There is eligibility for those who have discharge permits and there is eligibility for those who do not. It seems like someone could not generate credits unless they were a discharger; it is a language problem. Mr. Hoffman suggested defining who a regulated person is within the contents of that chapter. Mr. Shreeve asked, under Eligibility (A), (“Any person...may create, sell, purchase, retire...credits”), how someone would retire credits. Ms. Connelly stated that someone can buy credits, but not allocate them to a sector and retire them altogether for the good of the Bay. Ms. Payne stated that the language at present covers the situation of an entity retiring annual credits. Ms. Connelly stated that if a farmer creates a pollution reduction, it is credited to the agricultural sector; if it is traded to another sector, the other sector will receive those reductions; and, if it is retired, it is not credited to either sector. More pollution reduction would need to occur in order to meet sector goals.

Ms. Selman stated that the retired credit would be applied to the net reduction. There might not be a mechanism for Maryland to claim it to lower their cap. If a credit is bought, the reduction is occurring; if it is used towards a permit, then offsetting is occurring and there is no net benefit. If the credit is bought and it is not applied to a permitted sector, then the reduction is occurring with no offset. Ms. Payne stated that this is similar to the retirement ratio issue, where there would have been credits retired for the betterment of the Bay and the State would have accounted for those. Over time, the loads from various sectors would have been reduced by some amount. Now there is a reserve ratio which creates a pool which the State can use for certain purposes; if the credits are not used within that year for a term credit, then the credits are retired. For example, if credits are bought for a 5-year term at 1,000 credits per year, there is also a 5% reserve ratio which would equal 50 additional credits to be purchased. The 50 annual credits would go in to a pool; if they are not used by the State at the end of each year, then they would be retired for the good of the Bay. Mr. Myers stated that the language is not clearly explaining the process of retirement. Mr. Myers asked if there was a different type of retirement credit other than what was just explained. Ms. Payne replied, “No.” Mr. Myers suggested removing retirement credits from the list of eligible activities. Ms. Payne stated that there is confusion

between “retirement credit,” and “retire” or “to take out of service.” Mr. Myers stated that in all of the examples, there is a cap from which the credits are subtracted, and until the AfG issue is solved, then there is no cap. Ms. Payne stated that the Total Maximum Daily Load (TMDL) can be considered a cap.

Mr. Hoffman noted that (A) stated “Any persons eligible” while (D) discusses “Eligible participants in the trading program include...”. Mr. Hoffman suggested making (D) a subparagraph under (A) since it is a further elucidation of those who are eligible. Ms. Bubar asked about a permanent credit. Ms. Selman noted that on page 9 (5)(b), it states that permanent credits occur “[i]f credits are generated from a change to the landscape that is permanently protected by an easement or other legal instrument that conveys with the land.” Ms. Payne stated that On-site Disposal Systems (OSDS), the conversion of septic to sewer, would be considered a permanent credit as would reforestation of an area. Ms. Payne also indicated that the most desirable credits would be those in land preservation programs since they are already in permanent easements.

#### *Section 5: General Policies*

Ms. Selman asked about the exception to verification for permanent credits. Ms. Selman stated that in Virginia, there is still verification, but there is a 10-year window to ensure the trees are still growing, etc. Ms. Selman suggested that the verification and certification should be fleshed out, and the permanent credit verification could be added as well. Mr. Myers stated that if trading becomes a part of the program, then the credits generated should be certified on the same schedule as other BMPs. Ms. Payne stated that all of the agricultural BMPs are required to have annual certification; that is in regulation. Ms. Selman suggested an explanation in the regulations regarding how permanent credits and other credits will be verified should be included. Mr. Myers asked if the registry would have the verification information. Ms. Payne replied, “Yes,” and stated that if you are a verifier and have an account, the registry will provide notification when the projects are scheduled to be verified. Mr. Myers stated that if that information was not in the manual or the regulations, then it needs to be recorded somewhere. Mr. Shreeve stated that the information can be housed in the MDE geodatabase used by MS4s. Mr. Myers asked if an individual would have to file a Freedom of Information Act request to obtain that information, and stated that if the information was on the registry, then it would already be available since it is a public forum. Ms. Payne noted that not every permit written will be involved in trading. Ms. Payne also mentioned that if the registry is not used, then the registration numbers for the credits cannot be obtained.

#### *Section 10: Generation and Acquisition of Credits by non-Regulated Sources*

Mr. Myers asked if the locations of the practices would matter and if the delivery ratios for the location are factored into how much credit is generated. Ms. Payne replied that the delivery ratio

is dealt with, but not in this particular section. Mr. Michelsen asked if there were small MS4's which were not regulated by the NPDES program. It was replied that the intent was to state that other municipalities without an MS4 designation would not be regulated by the NPDES program. Mr. Michelsen suggested changing the language to state "small jurisdictions without MS4 permits." Mr. Michelsen asked, regarding language for credit acquisition reporting (D)(1) on page 17 ("All nutrient and sediment credits generated by non-regulated sources shall be acquired and reported by a regulated MS4"), if some other entity were generating the credits, why is the MS4 obligated to track the credits. Ms. Buhl stated that was not the intent, and the section needs clarification. Mr. Todd stated under Section (C), although it is titled "Credit Determination and Verification", there is only determination. Mr. Todd asked if there should be a separate section which describes verification, and whether it will refer back to manual procedures or not. Mr. Hoffman suggested including a section on verification. Mr. Hoffman asked if the goal was to have a revised version of the manual at the same time as the regulations.

*Other Sections:*

Regarding Section 8, Mr. Michelsen asked why there needs to be language on page 14 (A)(1) which stated that the "MS4 permittees may only enter in to a trade of purchase credits if the use of trading is specifically authorized under the terms of the MS4 permit." If the language is imbedded in the MS4 permit, then why is it reiterated in the regulations." There is also an issue with (A)(1)(a) which states "Permittees are eligible to acquire credits if no unaddressed permit violations exist that are considered by the Department to be significant non-compliance." Mr. Michelsen noted that if an MS4 entity found itself in non-compliance, it may be the time when it would need to trade for credits. Mr. Myers asked what "significant non-compliance" means. Mr. Michelsen stated that it made sense if an MS4 could not generate credits, but it should be able to purchase credits if it is non-compliant. Mr. Shreeve stated that should apply to any of the sectors. Mr. Hall stated that the language was opening to a lot of uncertainty as there is a lot of room for judgement and confusion.

Mr. Pomeroy stated that there is difficulty on the sell side and the introduction of a level of risk that is practically unmanageable in contracts. For example, if an entity is a source of credits, but it is in non-compliance due to unrelated parameters, then there is a cascading effect. Mr. Pomeroy suggested eliminating this portion altogether. Ms. Payne stated that in the agricultural program, you are eligible to trade in one of the pollutants as long as you meet the baseline for that one, even if you are non-compliant for the others. Mr. Pomeroy stated that a valid credit in the marketplace needs to come with some certainty. A meeting attendee recommended adding a definition in the regulations regarding the term "significant non-compliance." Also, more language is needed regarding verification, validation, and enforcement either in the regulations or the trading manual. There is also clarification needed regarding the verification of permanent credits.



Mr. Myers stated that there will be difficulty for MS4s as there is no Waste Load Allocation (WLA), monitoring reports, or certainty of what is being discharged. There is a concern regarding selling credits from an MS4 which is in non-compliance; it needs to be using all of its load reductions to meet its permit first. The language in permits needs to be changed to capture instances where a WLA is not expressed in pounds (i.e., those which have allocations in percent impervious). Regarding the concept of eligibility on page 8 (“Persons with certified credits resulting from the hook-up of onsite septic systems to a wastewater treatment plant”) and on page 16 (“Permanent nitrogen credits generated from converting on-site septic systems to a permanent hookup”): many of the hook-ups are preformed through state cost-shares, and as previously discussed, cost shares can be used to meet baseline, but not generate credits. Clarification is needed to indicate that credits are generated when hook-ups occur at the cost of the owner on the pages mentioned. Mr. Shreeve stated that whatever portion that is paid for by the owner for hook-up could be considered for credit generation.

Ms. Payne stated that in reference to Section 7, page 12, (5) (“A 5 percent reserve ratio shall be applied to each point-source generated credit.”), it was her understanding that a 5 percent reserve ratio be applied to all credits, not just PS credits. Mr. Payne suggested the removal of this portion from page 12, and its addition to the section on page 10 dealing with reserve credits. It should state that the 5 percent shall be applied to each credit generated by all sectors. Mr. Pomeroy proposed to resolve one of the earlier issues regarding MS4 sales. Mr. Pomeroy asked if it would be agreeable that the “significant non-compliance” provision was focused on MS4 sales only. Mr. Myers stated that it was agreeable if each sector had their own definition of “significant non-compliance”; the goal is to prevent entities which still need load reductions from selling credits. Mr. Michelsen stated that the language regarding acquisition and generation also needs to be clarified.

Mr. Pomeroy stated that the credits that are allowed for the OSDS hook-up are already at the lowest level reflecting Best Available Technology (BAT). What the grant is paying for is being set aside for Watershed Implementation Plan (WIP) compliance. The remainder would be the only source of credit generation. The inclusion of availability, even with use of grant funds, is fully appropriate since the State has the full benefit of the grant program funds. Mr. Pomeroy asked the Committee for their consideration in keeping that provision. Mr. Myers asked how the baseline would be defined for the trading or hooking up septic systems to sewer. Mr. Myers asked if achieving BAT could be considered baseline. Mr. Shreeve stated that current baseline for septic systems is for them to be maintained; any reduction from hookup to sewer should be considered the reduction and can generate credits. Mr. Myers was looking to make the scenario fair because the agricultural sector has to spend money meet baseline before they can trade. Ms. Payne stated that the agriculture sector does not necessarily need to spend money to meet baseline because certification of credits can occur before implementation and the practice can be paid for by the buyer.

Ms. Stecker stated that all comments can be submitted through July 7 and should be sent to Gary Setzer, Office of the Secretary, Maryland Department of Environment, 1800 Washington Boulevard, Suite 745, Baltimore, MD 21230. Comments may also be provided by contacting Mr. Setzer by telephone at 410-537-3744 or by email at [gary.setzer@maryland.gov](mailto:gary.setzer@maryland.gov).

#### 4. UPDATES

Ms. Payne announced that Queen Anne's County has recently released a Request for Proposals (RFP) for credits. The County is in search of 150 nitrogen credits and 15 phosphorous credits; July 31 is the deadline for proposals. This project could serve as a pilot for trading. Queen Anne's County is looking for credits for the purpose of offsetting its stormwater load. Ms. Payne stated that Queen Anne's county was looking for permanent credits, but it would take term credits if necessary. Mr. Myers asked of Queen Anne's County was going to be a Phase II and it was replied, "Yes." Ms. Payne added that there is a potential pilot trade under consideration in Harford County as well.

Ms. Buhl stated that the AfG group is seeking input from the Critical Areas Commission, the Maryland Department of Natural Resources (DNR) and others regarding policy. AfG policy is still waiting for the approval of the Phase 6 model which is expected in mid-July. The next Water Quality Trading Advisory Committee Meeting will be in September, and the goal is to have description of AfG as part of the Phase III WIP by then. Ms. Stecker stated that the AfG draft should be finished by October 2018 and finalized in April 2019. Ms. Buhl stated that the regulations will come first while continuing to work on the manual and AfG policy.

Mr. Knapp stated that an update was going to be given on the Phase III WIP at the Maryland Association of Counties (MACo) conference. The EPA and MDE will be facilitating a discussion which will discuss timeline, County/State responsibilities, etc. Mr. Shreeve stated that the State Highway Administration has released a RFP for stream restoration; bids are due by the end of August.

#### 5. PUBLIC COMMENT

It was asked, regarding Section 5, page 8 ("Where necessary to ensure compliance with local water quality standards, the exchange of credits in an area within the Chesapeake Bay Watershed subject to an approved local TMDL for total nitrogen, total phosphorus, or total suspended solids with allocations more stringent than the Chesapeake Bay Watershed TMDL shall be limited to those credits generated upstream of where the discharge reaches impaired waters"), what was meant by that statement. Mr. Myers replied that the language is supposed state that if there are locally impaired waters, then the credits should not be traded across the Chesapeake Bay. The intent is to have credits generated from upstream so hotspots will not be created downstream. Mr. Michelsen stated that the language could be changed to "upstream of the segment."

Mr. Pomeroy stated that there are objectives and obligations to comply with both the Chesapeake Bay TMDL and the local TMDL. The Bay TMDL has a short-term schedule associated with it so there are temporal discrepancies for many of the TMDL scenarios. The paragraph is more stringent than to “comply with both” and takes away a compliance mechanism from the Bay TMDL that has an earlier deadline. From a CWA standpoint, the permittee should comply with both, which can be reached by making every compliance tool available. Mr. Myers stated, from the anti-degradation standpoint, real load reductions downstream are the only ones being addressed for an impaired segment which is the reason for the addition of the language in the regulations. Ms. Payne stated that, in the agricultural sector, the more stringent of the TMDL’s would have to be met and the language should be changed. Mr. Myers stated that the regulations should be consistent. Ms. Selman stated that this issue is more important for the purchaser of credits since anyone selling would be in compliance. Ms. Pomeroy stated that the current and new discharging points need to be accountable within their own permits, and that is being lost by the language in this paragraph; the language should be updated to ensure the necessary protections to the water segments. Mr. Pomeroy stated that in terms of trading with entities which are ratcheting down on existing loads a hotspot would not be a concern. Mr. Pomeroy suggested changing the language to state “trading to offset new loads” which allows for the prevention of antidegradation without being too narrow or too broad of a statement.

It was asked that the Committee consider allowing industrial dischargers and industrial entities to participate as buyers and sellers in the trading program; it is not clear in the regulations if that is allowed. It was also suggested that the regulations be kept as broad as possible to allow for other entities to participate in trading.

The regulations are expected to be ready by the MACo conference. A hearing may be preemptively scheduled. Ms. Connelly suggested an exhibit at MACo.

## 6. UPCOMING MEETINGS

*September 18, 1-4 p.m., at MDE*

*October 16, 1-4 p.m., at MDA*