



MAMWA Participating in State Water Quality Trading Advisory Committee May 2016

Last fall, the Maryland Department of Agriculture (MDA) and MDE released the Maryland Nutrient Trading Policy Statement, launching a process to establish a cross-sector, water quality-based trading program that uses innovation, economies of scale and public-private partnerships to speed improvements to the Chesapeake Bay and local waterways. The program envisions trading not only between sectors (“cross-sector trading”) within Maryland, but ultimately between Maryland and the other Bay states (“interstate trading”).

Since the beginning of 2016, the state has held three meetings with its State Water Quality Trading Advisory Committee. Chris Pomeroy (MAMWA General Counsel) and Julie Pippel (Washington Co., MAMWA President) are representing MAMWA. The Committee has spent much of its time during recent meetings reviewing the draft Maryland Trading and Offset Policy and Guidance Manual and providing feedback to the state. In addition, during the March 21, 2016 meeting, MDE gave a presentation on local water quality issues as they relate to MS4 trading, and the Committee heard from local government and agricultural representative regarding their priorities and concerns.

In addition to the draft Manual, in late 2015, MDA issued proposed Agricultural Nutrient and Sediment Generation and Certification Regulations, which would establish the rules for the agricultural sector to generate and certify credits that could then be offered to other dischargers on a trading platform. On January 27, 2016, MAMWA submitted a letter supporting the development of trading regulations and requesting two technical changes in the definitions section:

“Total Maximum Daily Load” or “TMDL” – Currently TMDL is defined as “a limit set by U.S. Environmental Protection Agency in accordance with Clean Water Act requirements that establishes the amount of a particular pollutant, in this case nitrogen, phosphorus, or sediment inputs, that a water body can assimilate and still meet water quality standards.” MAMWA commented that the state has primacy with regard to TMDLs, and establishes TMDLs for impaired waters subject to EPA’s approval. The proposed text incorrectly states that TMDLs are limits “set” by EPA. MAMWA recommended revisions to clarify that agricultural credits may be generated for a TMDL developed by either the state or EPA or by both working cooperatively.

“Watershed Implementation Plan” or “WIP” – Currently WIP is defined as “the plan required and approved by the U.S. Environmental Protection Agency for achieving the pollution reduction goals and allocations necessary in implementing the Chesapeake Bay



TMDL.” MAMWA commented that the state’s Phase I and II WIPs were meant to serve as a “roadmap” for how the state would implement programs to reduce nutrients and sediment in a manner generally consistent with the Bay TMDL. EPA reviewed the WIPs and provided feedback, but it did not approve or disapprove their terms. The WIPs were not “required” documents, nor were they regulatory or mandatory.

In addition to regulatory work, on April 25-26, 2016, the state participated in an environmental finance symposium convened by the Chesapeake Bay Program Executive Council (which includes the Governors of the Bay states and the Mayor of D.C.) and the University of Maryland’s Environmental Finance Center. The purpose of the symposium was to “identify options for advancing a more marketlike approach to environmental protection and restoration.” The “conversations, discussions, and debate coming from the Symposium will be translated into a suite of financing recommendations that will be forwarded to the governors later this summer.”