

Trading Questions 11/18/2005

November 18, 2005

Mr. Andrew Zemba
Assistant Director
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Mr. Zemba:

The Citizens Advisory Council conceptually supports trading as one mechanism to use market forces to aid in environmental protection, and we acknowledge and applaud the significant effort that has gone into drafting the Interim/Final Nutrient Trading Policy. We are pleased to be a co-sponsor of the Listening Sessions conducted to solicit public input on the proposal. However, in addition to the process concerns we have already raised, we have numerous questions and concerns regarding the framework of the Interim/Final Nutrient Trading Policy. We believe that these issues need to be addressed before finalizing the policy; it is obvious that there is much confusion and lack of understanding of what is being proposed, and premature implementation may backfire in terms of acceptance of nutrient trading as well as other future market approaches to environmental protection.

We question if an adequate amount of reduction will be achieved without significant drivers for both point sources and non-point sources. We note that one of the reasons that air quality emissions trading has been so successful is that both the buyer and the seller have legal obligations to reduce emissions, and that the trading system and the participants are both accountable through emissions monitoring; neither of these are proposed in Pennsylvania's approach. Here, there is a continuing obligation on the point source, but it is not clear if there will be a similar obligation on the non-point source. Additionally, emission reductions will be calculated through a model instead of through actual measurement, raising questions about accountability. If Pennsylvania's tributary strategy obligations are not met at the border, how will anyone know where to adjust or decrease loadings if there is no monitoring upstream of the border?

There are also equity and effectiveness concerns with indirectly addressing non-point sources (NPS) by requiring additional reductions from publically owned treatment works (POTWs). Since NPS is 89% of the problem, ideally it may be economically and environmentally more effective and efficient to address NPS directly. Having those served by POTWs pay higher utility rates to have landowners implement BMPs rather than directly aiding implementation of basic BMPs and other reduction practices raises significant equity issues, especially if the landowner has also received public money to implement the BMPs. There are models being implemented in other states that address non-point sources in a more direct fashion, for example, having POTWs pay into a fund that directly finances buffers and other basic BMPs; while not a strict trading paradigm, this would avoid a number of the accountability and liability issues being raised with regard to the Pennsylvania proposal. We urge DEP to consider other options that directly encourage all to do their part to meet Pennsylvania's obligation, with trading available for situations where reductions would be over and above those needed to meet the Bay Tributary Strategy.

Another equity concern is related to using public funds to subsidize BMPs (e.g., through Growing Greener, CREP, etc) and then allowing the landowner to privately sell the credits created by these actions. Are emissions credits in the air program similarly subsidized by public funds? Will this program operate as a market force without continued subsidies?

There are also local vs. watershed-wide concerns. We understand that the Department's intent is not to create localized impairments while meeting the overall standards at the border; however, if trading is allowed between the far reaches of the watershed, then there will be a perception and maybe even a reality that local water quality may be allowed to diminish, especially since trading will occur not to get beyond compliance, but for point sources to reach compliance with their assigned loads. We recommend that DEP consider implementing and using trading first as a means to create good non-point source management on a local level, so that local citizens can see and ultimately support the benefits that accrue. Trying to create a trading paradigm throughout a watershed the size of Pennsylvania's Chesapeake Bay Watershed may cause locals to oppose paying for actions designed to achieve improvements in water quality at the PA-MD border if they are not perceived to also improve local water quality.

While the department has indicated a need to differentiate between the Chesapeake Bay Tributary Strategy and the nutrient trading policy, trading is at least perceived as the primary, non-technological option being presented for sewage treatment plants to meet their new permit limits. If trading is not successful, what options are available for addressing NPS, such as farming and stormwater? With all the attention and resources focused on a trading program, where does this leave approaches such as pollution prevention, that may result in environmental as well as economic efficiencies, perhaps with fewer transaction costs?

Attached is a list of questions that we previously submitted to Water Deputate staff, some of which have been responded to in a draft Frequently Asked Questions document. We again submit our list as a number of them were either insufficiently answered or not addressed at all.

Based on our own questions and the many that were raised at the two listening sessions, it is clear that there is much confusion, and many issues that remain open and unaddressed. We are concerned that premature implementation will only add to the confusion, and ultimately will adversely affect acceptance of trading and other market approaches to environmental protection. We are pleased to learn that the comment period has been extended and that additional outreach will be conducted. We strongly recommend that the policy not be finalized until:

- More extensive public input is received and processed, including additional listening sessions, both in and outside of the Chesapeake Bay watershed, since the policy will be statewide; and
- The many issues and questions raised here and by other interested parties can be addressed.

Thank you for the opportunity to comment. We look forward to hearing back from the Department as quickly as possible regarding how these questions and concerns will be addressed in a revised policy.

Sincerely,

Walter N. Heine
Chair
Citizens Advisory Council

Attachment

cc: Mr. John Hines

Citizens Advisory Council Nutrient Trading Questions November 18, 2005

General questions

- Where is the legal/statutory/regulatory authority for the Nutrient Trading Policy? What is the authority for the Chesapeake Bay Strategy to govern Pennsylvania?
- Where else has this been done? Have they had successful trades?
- What is the projected impact on the homeowner/taxpayer who may see increased rates for wastewater treatment? How does this impact compare to the impact on those who cause/contribute to the non-point sources?
- Has DEP done an economic analysis on achieving nutrient reductions indirectly through trading vs. by directly addressing non-point sources?

Program implementation

- What program measures will be used to measure the success of the program? How much measurable reduction in nutrients will be needed to deem the program to be successful?
- What are the plans and timeframe for transferring the program to the private sector?
- At what level of success will it be transferred?
When moved from DEP's jurisdiction to the private sector, how will accountability be ensured?
- How does this fit into the existing framework of enforcement of standards, permits, etc.? How will private contracts be incorporated into an NPDES permit? How will private contracts affect citizen enforcement actions authorized under the Clean Water Act?
- How will the interim program be implemented and staffed?
- Who will be responsible for monitoring and verifying nonpoint source nutrient and sediment reductions?
- Given the ongoing budget concerns, what are the departments plans for staffing this effort?
- Where is the workload analysis for implementing this policy and program?
- What does DEP consider to be advanced nutrient management techniques?

Measurement and Accountability

- While trading has successfully occurred for years in the context of air quality, water quality programs do not have the same mechanisms to ensure accountability. The policy states that DEP may monitor BMPs but it apparently won't be required; in air trades, there are requirements for CEM and stack testing. How will those involved in this interim program be held accountable?
- How will DEP determine the baseline from which nonpoint source nutrient and sediment reduction credits are generated?

- How will DEP quantify, monitor and verify nutrient and sediment reductions from forested riparian buffers, cover crops, and advanced nutrient management techniques?
- What are the monitoring methods that sources will be required to install to calculate and verify the nutrient credits they generate?
- What methodologies will DEP use to justify deviation from the 1:1 trading ratio to account for nonpoint source nutrient reduction uncertainties and to compensate for the loss of a pollutants volume caused by natural attenuation during travel over land or in water?

Water Quality Improvements

- Will the Chesapeake Bay model be tried up against actual impacts on water quality every year, to ensure that trading doesn't just become a shell game with no actual environmental improvements?
- The policy states that the department intends to use a combination of watershed permits and individual NPDES permits for documenting point source trading. Please explain what a watershed permit is, what's the statutory foundation for such a permit, who'd be required to obtain one, what it would regulate, how regulated entities would demonstrate compliance, whether there will be permit fees, who will pay them, etc.

cc:John Hines