

Accounting for Growth Work Group Summary **Meeting #4: 4/19/2013**

In Attendance:

Work Group (WG) Members: Tom Ballentine, Bevin Buchheister, Yates Clagett, Valerie Connelly*, Sandy Coyman, Candace Donoho**, Stephen Harper, Lynne Hoot, Jonas Jacobson***, Jon Laria, Katie Maloney, Erik Michelson, Shannon Moore, Alison Prost, Dru Schmidt-Perkins, Josh Tulkin

* for Pat Langenfelder

**for Cathy Drzyzgula

***for Mike Powell

Support Team (ST) Members: Darrell Brown, George Chmael, David Costello, Kate Culzoni, Lee Currey, Dave Goshorn, George Kelley, Brigid Kenney, John Rhoderick, Dusty Rood, Steve Stewart, Joe Tassone

Absent:

WG: Mary Ann Lisanti

ST: Dan Baldwin, Jeff Corbin, Les Knapp, Doug Lashley, Dave Nemazie, Julie Pippel

Public Attendees:

Vimal Amin (MDE), Paul Emmart (MDE), Dinorah Dalmasy (MDE), Brenda Dime (Carroll County Government), James Hearn (WSSC), Marya Levelev (MDE), Susan Payne (MDA), Jay Sakai (MDE), John Sheff (StateStat), Phillip Stafford (StateStat), Stuart Stainman (Patapsco Back River Tributary Team), Helen Stewart (DNR), Trent Zivcovich (Whiteford, Taylor, Preston), Bill Castelli (MD Realtor), Claudia Friedetzky (Sierra Club), Ridgway Hall

Welcome and Overview

Facilitator George Chmael welcomed everyone to the fourth Accounting for Growth (AfG) Work Group meeting and announced which members could not attend the meeting today but had proxies sitting in for them: Valerie Connelley for Pat Langenfelder, Candace Donoho for Cathy Drzyzgula, Jonas Jacobson for Mike Powell, and the permanent change of Bevin Buchheister for Ann Swanson.

Mr. Chmael reminded the WG of the last meeting's action items, one of which was the development of Steve Stewart's "AfG Options" table/matrix (the "Matrix" which includes issues, options, and associated pros/cons) as a tool for guiding topical discussion. To address this action item, and at the direction of the Work Group, a subgroup or "subcommittee" was formed consisting of five WG members, one from each constituency, and several ST members. The subcommittee enhanced the AfG Options matrix to include a list of eleven primary issues with twenty sub-issues. The second action item, the development of a calculator tool (the "Calculator") designed to model hypothetical development situations and present the practical outcomes of specific decisions, was addressed and enhanced by the subcommittee as well. The Matrix and the Calculator were reviewed and updated by the WG during the meeting following MDE's review of the assumptions made in the development of the Calculator. Mr. Chmael also noted that a white paper on grandfathering had been provided to the WG by MDE.

Calculator and Assumptions Presentation and Discussion

Ms. Kenney explained the assumptions of the Calculator. The Calculator is specific to geography, land use categories, pre- and post-development, and wastewater discharge. It is not as sophisticated as the NutrientNet tool. There are four pre-set baselines generated by the Calculator: zero allocation baseline (offset of 100% of the post-development load), forest baseline (offset of 100% of the post development load minus forest), Bay Total Maximum Daily Load (TMDL) allocation baseline (offset to the pre-development load with the 2025 WIP strategy), and prior land use baseline (offset to the existing land use in the 2010 progress run). Loads are calculated by stream segment and then averaged when multiple segments are selected (as in a basin, 8-digit watershed, or county). Loading rates are from the Chesapeake Bay Model 5.3.2. Land use groups include crops, hay (fallow), developed impervious, developed pervious, forest, and pasture. Post-development load is calculated as:

$$[(\% \text{ impervious})(\text{impervious No Action loading rate})+(\% \text{ pervious})(\text{pervious No Action loading rate})](1 - \text{ESD reduction})(\text{site area})+(\% \text{ forest})(\text{forest loading rate})(\text{site area})$$

Environmental site design reduction is the same efficiency applied in the Chesapeake Bay Partnership model: 50% reduction of nitrogen and 60% reduction of phosphorus. Specific residential septic, sewer, and commercial wastewater numbers and equations were distributed to the WG via email and are available at http://www.mde.state.md.us/programs/Water/TMDL/TMDLImplementation/Documents/AccountforGrowth/MeetingMaterials/Meeting4/AfG_Scoping_Calculator_Assumptions_circulation_copy.pdf.

To use the Calculator, the user will select a geographic location in the "Delivery Factor" worksheet using the drop down menus in each column. The user will also enter values on the "Calculation" worksheet in any of the yellow cells. Where there are limited options, the yellow cell contains a drop down menu. Four residential examples are already entered on the Calculator worksheet, and another column is provided for "User Defined Scenario." There is also one column for a non-residential development. The other two worksheets, "N Plot" and "P Plot" provide a graphical representation comparing the four baselines for each of the six columns.

Mr. Chmael reminded the WG of the importance of the Calculator in assessing the impacts of the range of decisions the WG will consider in the Matrix. The Calculator is meant to aid in interpretation of the practical effects of the WG's final policy recommendations. Mr. Laria expressed an eagerness to move past discussion of the assumptions and achieve a consensus approval of the Calculator. Mr. Chmael asked for any additional input on the Calculator and assumptions. A few WG members asked for clarifications, which were supplied by the ST and presenters. The WG member who requested a user-defined value in the septic removal rate options was referred to use NutrientNet for more detailed and customizable load calculations. There was general consensus of approval of the assumptions and Calculator.

The WG discussed the impact of costs on policy decisions and vice versa. A backstop fee-in-lieu, the ceiling and floor of nutrient costs per pound, market fluctuations based on supply and demand, and similar items were discussed. A request was made for a sheet of the most likely used best management practices (BMPs) per sector (agriculture, urban, and so on) with associated annualized costs per pound. One WG member cautioned that the Clean Water Act does not allow the consideration of cost to avoid compliance, and to do so would invite challenges from environmental groups. The WG member also pointed out that if a cost-benefit analysis is conducted, it must recognize that someone will bear the cost of the loads – the developer, local government, and/or Maryland residents. According to Darrell Brown, EPA will review all trades conducted.

ACTION: A sheet of the most likely used best management practices (BMPs) per sector with associated annualized costs per pound will be drafted.

Decision Matrix

Ms. Kenney led a review of the Matrix, asking for additional options, pros/cons, and any suggested eliminations. Ms. Culzoni updated the Matrix as revisions were suggested. The updated matrix is located at http://www.mde.state.md.us/programs/Water/TMDL/TMDLImplementation/Pages/Accounting_For_Growth.aspx.

I. Applicability

The applicability of the AfG policy to agriculture was discussed, especially with regard to changing crops and land use on individual farms. It was noted that agriculture did not account for growth as a sector overall, although agricultural practices changed from year to year on a particular site - wastewater was the only sector that did account for growth. One WG member noted that any sector with increasing load would have to offset load, no matter what the sector is.

The possible basis for and the feasibility/fairness of an exemption/appeals process was discussed.

II. Effective Date/Transitioning

There was some discussion of the term of permits, including Municipal Separate Storm Sewer System (MS4) permitting was noted. It was also noted that the later the effective date of implementation, the more citizens will have to pay; an earlier date leads to developers paying more.

It was suggested by WG members that draft combinations of the major interrelated issues be compiled by the subcommittee for the WG's consideration.

III. Fee-in-Lieu

The local government representative noted the need for local fee money to stay in the jurisdiction in order to address local TMDLs (right of first refusal).

A residential development representative noted the need for a permanent fee-in-lieu in order to address potential inventory shortages.

Fee-in-lieu was noted to be a last resort option for when credit inventory is not available. Use of a quasi-government/third party recipient was also discussed.

IV. Which Pollutants

It was noted that control of nitrogen loads typically controls phosphorus and sediment loads as well. It was also noted that not all BMPs balance the removal of nutrients in the ratio that is necessary, and the market may select for BMP(s) that do not remove enough phosphorus. When there is a local impairment of phosphorus or sediment, phosphorus should be offset as well to comply with the TMDL. It was also noted that nitrogen and phosphorus could be bought separately.

VII. How Can the Post-Development Load be Permanently Offset

One WG member noted that a fee assures maintenance. A local government representative stated that local governments should not be required to take over facilities after some period of time. The State does not have the funds to maintain the offset either. A WG member suggested a review of cemetery maintenance for a model.

IX. Encouraging Sustainable Development Patterns

Redevelopment was noted as a beneficial practice, compared to land use conversion. As was the exemption from stormwater only for redevelopment, which could dis-incentivize or incentivize the developer to generate additional credits for sale.

X. Trading and Credits

An environmental representative noted that the 10% retirement rule is not yet found in regulation, but MDE noted that the current trade policy and the AfG policy should be consistent.

Reduction of a site's post-development load below the baseline allocation could produce a negative number that could be a credit.

It was noted that although EPA is revising its guidance on credit certification, verification and transparency, the results of the revision will be released after the WG has completed its work; therefore, recommendations from the WG are critical and cannot wait.

An environmental representative asked for a state public contact and transparency protocol to be included in the policy, including defined roles for MDA (credit certification) and MDE.

ACTION: Three to four draft combinations of the major interrelated issues (alternatives) will be compiled by the subcommittee with representatives of each constituency for the WG's consideration. Each representative is invited to bring their constituency's ideal combination and then work with the subcommittee to refine the options menu for the WG's consideration. These alternatives will not be recommendations but a way for the WG to effectively narrow down options for inclusion in an AfG Program. These alternatives will be presented to the WG at the May 10th meeting.

Next Steps

The next meeting will be held on May 10, 2013 at 12:30 p.m. at MDE. The updated Matrix and any other materials for the next meeting will be distributed in one email.

Public Comment:

None