

Accounting for Growth Work Group Summary
Meeting #6: 5/31/2013

In Attendance:

Work Group Members: Tom Ballentine, Bevin Buchheister, Yates Clagett, Valerie Connelly*, Cathy Drzyzgula, Stephen Harper, Lynne Hoot, Les Knapp**, Jon Laria, Mary Ann Lisanti, Katie Maloney, Erik Michelson, Shannon Moore, Mike Powell, Alison Prost, Dru Schmidt-Perkins, Josh Tulkin

*for Pat Langenfelder

**for Sandy Coyman

Support Team: Vimal Amin, Meg Andrews, George Chmael, David Costello, Kate Culzoni, Candace Donoho, Lee Currey, Jim George, Dave Goshorn, George Kelley, Brigid Kenney, Susan Payne, Julie Pippel, John Rhoderick, Helen Stewart, Steve Stewart, Joe Tassone

Absent:

Work Group Members: Sandy Coyman, Pat Langenfelder

Support Team: Dan Baldwin, Darrell Brown, Jeff Corbin, Dave Nemazie, Dusty Rood, Roger Venezia

Public Attendees:

Paul Emmart (MDE), Dinorah Dalmasy (MDE), Brenda Dinne (Carroll County Government), Cristen Flynn (MD General Assembly), James Hearn (WSSC), Hannah Murray (Rodgers Consulting), Marya Levelev (MDE), Mindy Selman (WRI), Phillip Stafford (StateStat), Trent Zivkovich (Whiteford, Taylor, Preston)

Welcome and Overview

Facilitator George Chmael welcomed everyone to the sixth Accounting for Growth (AfG) Work Group (WG) meeting and reminded the WG that there are two scheduled meetings remaining. Due to concern regarding an unfinished agenda and the time left before Maryland Department of the Environment (MDE) finalizes the draft regulations in September, the WG agreed to increase the meeting time by two hours (9AM – 3PM instead of 9AM – 1PM) for the next two meeting dates and scheduled an additional, tentative meeting date on Monday, July 8th. In noting the now compressed timeline, Mr. Chmael stated that there were several presentations prepared by the Support Team for the WG, but no materials were prepared for distribution. Valerie Connelly and Les Knapp attended as WG members for Pat Langenfelder and Sandy Coyman, respectively.

MDE Regulation Language Discussion

Mr. Chmael also reminded the WG of their progress from the last meeting, where the WG generally agreed on fourteen of the thirty-one policy recommendations. The first of these agreed options, the Applicability Trigger, was reviewed by Ms. Kenney, Senior Policy Advisor at MDE, who explained the linguistic and logical difficulty of the WG's Applicability Trigger as it currently stands. The language in Issue I. A option 2 includes a trigger (the activity subject to regulation), threshold (the minimal limit of the activity – at what point is the activity too insignificant to be regulated), and exceptions (activities not to be regulated) all in one sentence. The WG reaffirmed its position that if there is not an increase in wastewater loading or point source pollution, the regulation does not apply. Ms. Kenney noted that option 2 violated Guiding Principle 1, which states that any load without an allocation must be offset. Because there is no allocation for a new urban load, Principle 1 would seemingly require an offset for that load. If that new urban load is given an allocation, the allocation of some other sector must be reduced. One WG member stated her impression of the AfG program's purpose was to account for new sources and additional loads. MDE responded that the AfG policy is a hold-the-line effort to ensure that the Bay meets its Total Maximum Daily Loads (TMDLs). WG members responded with the understanding that

AfG is a tool for ensuring the Bay meets the TMDLs, not to require a decrease in current loads. MDE stated that AfG also supports important State policies, like preserving agriculture, disincentivizing low-density high-loading development and incentivizing sustainable development.

The WG reaffirmed their recommendation that only additional loads not accounted for in the Watershed Implementation Plan (WIP) fall under the Accounting for Growth (AfG) policy, regardless of changes in land use. It was also noted that the tighter the trigger, the fewer exceptions needed; and that simplicity can be built into the threshold. Discussion of the exact language was tabled until a baseline for the trigger was determined by the WG.

MDE Presentation on Stormwater Allocation Baselines and Post-Development Loads

Jim George of MDE provided a presentation to the WG centered around the baseline question, “What allocation, if any, should be given to a new source post-development load?” The offset required can be positive or negative (a credit), depending on the baseline used. His example was for new development on either forest or agricultural cropland, using statewide loading rate averages, and the four baselines under consideration by the WG (zero allocation, forest, Bay TMDL 2025 allocation, and 2010 land use). A WG member asked if the new development does not have a TMDL allocation, but it loads the same or less than the prior land use, is that development in violation of the WIP and noncompliant with the 2025 TMDL? Dr. George responded that it does not have an allocation in the current TMDL and until it has an allocation it is not consistent with the TMDL.

An agricultural stakeholder in the WG noted a concern with the prior land use baseline using statewide averages: if a farmer using all potential Best Management Practices (BMPs), and has a very low load develops his or her land, the results are that the builder may be allocated more than that parcel was loading and that some day in the future, agriculture might be asked to do more to make up for this. Loads from farms can be individually estimated using the Nutrient Net Trading Tool. Dr. George agreed that is a problem with baseline option 4. A county government stakeholder responded that the goal is to offset the difference between pre-development and post-development, thus baseline option 4 was chosen. The stakeholder further acknowledged the implications raised by the WG and proposed using the forest baseline when active farmland is developed, or placing restrictions on credit sources to offset development of active farmland.

The question of whether this incentivizes taking agricultural land out of production was also raised by the WG. One WG member asked if there were other policies in place to deter the conversion of farmland. MDE replied that current state policies do not significantly deter sprawl development. An agricultural stakeholder noted that a balance must be struck between disincentivizing the conversion of farmland and reducing the value of the farmland should the farmer decided to sell the land for development.

An environmental stakeholder maintained that under the TMDL, if development changes the land use category, the prior land use sector is not hurt, because even though its allocation is reduced, it will also be excused from some part of the reduction target. Mr. Rhoderick (MDA) cautioned that there is an additional burden because although some load is eliminated if agricultural land is converted to a use with lesser load, the needed reductions must be accomplished on fewer acres, and there is less agricultural land remaining to utilize the manure produced as fertilizer.

A development stakeholder requested that the load calculations in the presentation that include only stormwater numbers be reevaluated with the wastewater loads and presented to the WG in order to fully assess the baselines. MDE agreed to provide the numbers and stated that this will further demonstrate the disincentive to sprawl development. The stakeholder replied that including wastewater reveals a more complex scenario related to sewer access and capacity. Dr. George noted that, aside from the issue of incentives between sprawl versus growth in sewered areas, his presentation revealed an issue of incentives between forest and farmland development outside of sewered areas. He noted that some

baseline options had neutral incentives for forest vs agriculture development, whereas other options create an incentive to develop cropland relative to forest land.

MDE reminded the WG that they may define redevelopment for this policy. It does not have to be the same definition used for stormwater.

MDA Presentation on Basin Loadings

Mr. Rhoderick presented agricultural land loads in different basins. He noted that 60% of Maryland agriculture has met the basin TMDL allocation. This information provided context to the range of agricultural loads within basins as compared to the statewide average. Aggregator and Support Team member, George Kelly, also highlighted the need to create market certainty by publishing loading and offset numbers in advance. MDE noted they could provide estimates to the Work Group on the relative costs related to BMPs.

WG Baseline Proposals

One WG member asked if the baseline for offsets should be the same as what is currently used for credit generation. The Support Team replied that the baselines may be different because they are to achieve different goals. The baseline for trading is the TMDL while the baseline under discussion will allow net zero loadings from growth.

Another WG member suggested discussion of keeping post-development loads in the pre-development sector to evaluate the simplicity/complexity of the idea.

The issue of maintaining simple, regulatory recommendations was repeatedly raised by WG members throughout the meeting.

After additional discussion, the following three proposals were made for the WG's consideration: one proposal from the three alternative combination suites discussed at the last meeting, and two from WG discussion. An amendment was also proposed.

The baseline proposal remaining from the three alternative combination suites discussed at the last meeting is:

1. Forest allocation at basin level or statewide average (whichever is more restrictive). This proposal provides the premise behind allowing new growth and meeting TMDL requirements. It also adds protection back into the policy since air deposition was removed from the WG consideration and accounts for development as a permanent load.

The county government stakeholders proposed the following baseline:

2. Subtract the pre-development 2025 target sector load from the new development load from the disturbed area (wastewater and storm water load have to meet state requirements (ex. ESD to MEP (50%), BAT)).
 - Whatever is left (if negative and agricultural or forest) reverts to 0.
 - Any additional load (positive) must be offset.
 - Option to add additional practices for credit (after calculation).
 - Weighted average is used to calculate pre-development 2025 target is based on land use (cropland, pasture, hay, etc.).

This baseline starts with the pre-development load that meets the TMDL and subtracts the state requirements. Whatever is left must be offset or zeroed out. BMPs may be added on after offsetting the allocation or zeroing out the allocation credit. This reduces incentive to develop on agricultural land and is a site-specific option. The Agricultural sector doesn't have to give up the BMPs that are already on land. One consideration for this baseline proposal is that it could increase costs due to certification and verification of site-specific loads.

3. One environmental stakeholder proposed the following to achieve a baseline between the forest and TMDL target and reduce incentive to develop on agricultural land:
 - For any agricultural land, use the most restrictive pasture load within the state's counties' load range (ex. 3.72 lbs of nitrogen) at the 2025 TMDL target.
 - This is based on the Support Team's advice that EPA guidance will use the minimum load of the range or the individual basin load.
 - The 8.7 lb statewide average will be used if restrictions in trading geographies
 - For forest, use the 2025 TMDL target baseline (use statewide average of 3 lbs).
 - For urban development, use the 2025 TMDL target.

A stakeholder from the agricultural sector proposed an amendment to one of the proposals.

The amendment proposed a baseline that equals the load determined through the onsite assessment tool (Maryland Nutrient Trading Tool) provided that the number is between the pasture load and the 2025 TMDL target at the basin level for agricultural land.

Next Steps

- Stakeholders will discuss the proposals with their constituency and bring input with real life examples to the next meeting.
- Stakeholders will consider how the proposed baselines impact decisions on other policies.
- MDE will modify the Calculator to run scenarios under the proposed baselines.
- Maryland Department of Planning will send out Wastewater Treatment Plant capacity maps.
- BMP cost ranges will be distributed to the WG.
- The next meeting will be held on June 14, 2013 at 9:00 a.m. at MDE.

Public Comment:

None.