AfG Work Group Progress-to-Date
July 15, 2013

Baseline

1. The offset = (the actual post-development load for the sector) minus (the allocation in the 2025 WIP for the pre-development land use).
   Except:
   <u>Active farmland</u> (assessed as ag use) - use statewide average for pasture load, except that if the result is a negative number, it resets to zero under ag land.
   <u>Redevelopment</u> - Offset requirements for 20-40% impervious could be based on a sliding scale while higher levels of impervious surface could have either a minimal offset or no offset (total exemption)
   <u>Infill</u> - minimal or no offsets for infill projects that do not include large pervious surface areas; some offset required for large pervious surface areas for infill
   <u>Forest</u> - forest baseline
   SUPPORT: MACo (minus Mary Ann Lisanti who was absent), MML, Developers, Stephen Harper, Jon Laria, Agricultural representatives (minus Yates Clagett who was absent)
2. Forest load baseline for all offsets
   SUPPORT: Chesapeake Bay Foundation, Sierra Club, South River Federation, 1000 Friends of Maryland, CBC

Permanency

All loads must be permanently offset – WG Agreement

Applicability

<u>Trigger</u> - The alteration of land, or construction or alteration of a structure that creates a disturbed area equal to or above the threshold limit and (1) increases the wastewater load, or (2) increases the nonpoint source pollution coming from the parcel. Change in land use alone does not trigger the offset policy. Changes in agricultural activities (other than buildings/structures) such as changes in crops do not trigger the offset policy. – WG Agreement
<u>Threshold</u> - 5,000 square feet of disturbed land; 5,000 sq ft. to 1 acre is a De Minimus fee, 1 acre and above subject to full compliance. WG Agreement

- Further discussion and agreement needs to occur on county delegation

<u>Exceptions</u> - No exceptions. – WG Agreement

- Consideration for Public Works projects to meet exceptions based on defined and specific criteria to be considered in separate subcommittee process.

Effective Date

December 31, 2014 – WG Agreement

- Allow county option to modify grandfathering clause

Preliminary plan submittal – NEED CLEAR DEFINITION OF "SUBMITTAL"

- Provide similar documentation to stormwater requirements (certain level of engineering and investment, etc.) for preliminary site plan
- Developer has opportunity to modify site plan
- Trigger dates
  - MDE regulations finalized by Dec. 2013
  - Local jurisdictions have ordinances and rules in place by Dec. 2014 (could be sooner)

- o Preliminary site plan due six months after county has regulations/ordinances finalized or no later than June 2015
- o End of construction "drop dead" date – similar to stormwater regs
- o Alternative: Developer could submit preliminary site plan by Dec. 2014 and be subject to only MDE regulations (not county regs and ordinances)
- Unresolved issue: Who is paying for loads generated between now and implementation date?

Fee-in-Lieu

Availability – Fee-in-Lieu is permanent option - WG Agreement

Payable to Whom - Establish a fee-in-lieu for all nutrients that need to be offset. Program goal is to get nutrient reduction on the ground as fast as possible to offset any increases in load. - WG Agreement

- Local governments have the right of refusal to run program first based on set of criteria on how/when funds are used
- Should have checks and balances in place for how/when fees are used to offset load (using permanent or temporary BMPs)
- Whoever runs program is responsible for offsetting loads with BMP practices and maintaining practices
- Money would be reverted to BRF if funds not used appropriately;
- Defined timeframe of when responsible party must have practices in place – NEED TO DEFINE TIMEFRAME
- Local water impairment issues have to be addressed by program
- Provision for periodic review of price (i.e. 3 years)
- Establish fee-in-lieu committee to further discuss program details and regulatory language (language on what fee-in-lieu is/how it is used/acts as deterrent/safety valve)

Setting the Price - Based on average cost (including O&M for a set time frame) of a range of permanent (urban OR all) BMPs; price is adjusted based on 3-year average of actual costs

- Further discussion and information on estimated costs needed; needs to be high enough to encourage trading, but not so high that development becomes unviable.

Which Pollutants to Include

Offset nitrogen statewide and credit associated phosphorus reduction; offset phosphorus and sediment wherever there is a local impairment – WG Agreement

Calculating the Post-Development Load

Stormwater Loading Factors – Scale, EOS and Delivered Loads

1. Use 5 basin EOS loading factors, followed by Land River Delivery factors
   - o Support – MACo, Developers, MML, Agricultural Community, Stephen Harper, CBC
   - o Undecided – CBF, Sierra Club, 1000 Friends of Maryland, Jon Laria
2. Use Edge of Stream Loads
   - o Support – South River Federation

Stormwater Loading Factors – Adjustments for on-site stormwater BMPs – WG Agreement

- Default – 50% reduction of nitrogen and 60% reduction of phosphorus for ESD to the MEP
- Recognize additional reduction if develop opts to demonstrate the use of more effective BMPs, using EPA's efficiencies
- Use Expert Panel to determine performance standards for new development or default

OSDS Loading Factors – Location - WG Agreement
- Use area specific EOS loading rate based on 3 zones (80% in CA, 50% within 1,000 feet of a stream but not in CA, 30% for all others)

OSDS Loading Factors Adjustments for efficiency of Nitrogen removal at Edge of Field - WG Agreement
- Use MDE, field verified nitrogen reduction credits based on type of BAT system installed.

Wastewater going to WWTP- WG Agreement
- If BNR, ENR and/or Secondary Treatment with capacity, no offset needed

Atmospheric Deposition- WG Agreement
- Eliminate Atmospheric Deposition calculations from the calculations

Post-Development Load

When do the Post-Development Load offsets need to be in place – WG Agreement
- Require that all the offsets (gap b/t what the developer is able to mitigate onsite and off-site credit acquisition) be in place for defined phases of the development before construction of that phase can begin

When do the Post-Development load offsets have to made public– WG Agreement
- At an early stage in the process (TBD), the developer must propose the amount of offsets needed.

Encouraging Sustainable Development Patterns

Definitions – WG Agreement
- Redevelopment - Include in redevelopment parcels having pre-development impervious cover of between 20% and 40%, and provide a sliding scale of amount of offset needed
- Infill – NEEDS DEFINITION

Trading Program

On-site Credit Generation– WG Agreement
Establish approval process that streamlines additional/new BMPs available for credit generation, including:
- Enhanced site design reduction practices, such as, fingerprinting of layout
- Preservation of forest practices beyond the requirements of the Forest Conservation Act (FCA)
- Reforestation/afforestation practices beyond the requirements the FCA or local riparian buffer requirements
- Credit for on-site stream restoration that would need to be approved by local jursidictions to assure it fits with the local policy and restoration efforts
- Use of Expert Panel
- List of acceptable on-site credits

Will be an extension of stormwater manual (by reference) and include a provision for BMP practices as used in Bay Model (MDE's accounting for stormwater document)

Off-site Credit Generation – WG Agreement

Establish approval process that streamlines additional/new BMPs available for credit generation, including:

- Credit for capturing offsite drainage and providing treatment (retrofit). Credit based on loading to the new facility and the type of facility installed using the CBP document on stormwater retrofitting credits
- Expand and convert a SWM facility that is immediately adjacent to the project, would need land on the project to achieve the expansion
- Conversion of existing stormwater facilities for greater pollutant removal. This would need to be approved by local jurisdictions, but would probably involve the conversion to privately owned facilities
- Installation of denitrifying OSDS systems. Need to be sure it does not conflict with local TMDL requirements. Have owners register their systems as available for installation
- Possibility for a variety of offsite reforestation offsets
- Generate credits through exceeding the requirements for redevelopment by installing greater SWM or planting. Maybe not available for revitalization projects
- Other project identified by a local jurisdiction for urban credit options (connection of package treatment plant to WWTP with ENR, installation of spray irrigation for land application of treated wastewater, etc.)
- Use of Expert Panel

Will be an extension of stormwater manual (by reference) and include a provision for BMP practices as used in Bay Model (MDE's accounting for stormwater document)

Credit Certification, Verification and Transparency

Option – please verify if this is accurate and what, if anything, is missing

- Establish independent auditors (that are qualified, knowledgeable and truly independent); additional checks and balances to avoid conflict of interest
- All trades to be in a publicly accessible, on-line database established by State (MDE and MDA) and used to calculate progress
- Leverage existing MDA verification policies – NEEDS FURTHER DISCUSSION?
- MDE is ultimately responsible for verification, enforcement and transparency of permitting process and market trading program
  - MDA is responsible for certification verification of ag credits
  - MDE is responsible for certification verification of urban credits
- State certification of Credit Verifiers for all credits - urban and agricultural

Regulation of Brokers and Aggregators – WG Agreement

- Third party review
- Qualifications and best practices (bonding, certified, percentage of reserve and more); do more research on what other state's do

Restrictions on Trading Geographies

- Interstate trading when available and consistent among states, but limited to trading within the basin – WG Agreement

1. Use a hierarchical trading geography - basin first expanding ultimately to State if no credits are available; offset is required at local level if there is a local impairment
   o 3-year review to assess trading scale impacts
   SUPPORT - ENGOs, Agricultural community, Stephen H.
   UNDECIDED – Jon Laria, CBC
2. Limit trading to statewide, unless the development occurs on a nutrient impaired local segment, then must be offset at local level for that nutrient; county has option to limit trading to smaller scale if they wish to do so
   a. Periodic review to assess trading scale impacts
   SUPPORT – MACo, MML, Developer
   UNDECIDED – Jon Laria, CBC

Credit Stacking – WG Agreement
- Horizontal credit stacking is allowable
- Vertical credit stacking to be evaluated at future date
- Not acceptable when meeting an obligation or environmental functional replacement like mitigation requirements

Cross-sector Trading for TMDL Compliance
Once an individual's TMDL requirements are met, allow any sector (primarily urban sector/local jurisdictions) to trade (buy credits) with another sector (primarily agricultural sector) to more cost effectively meet their TMDL load allocation within trading jurisdictions with county option.
- More discussion needed at Subcommittee level

Ratios to increase margin of safety and accelerate Bay restoration
Require that the load be offset at a 1:1 ratio, with a 10% retirement ratio – WG Agreement

General Recommendations
- MDE will prioritize setting TMDLs…..303
- Establish stakeholder group to review AfG program issues
  o Consider using BRF committee as review mechanism for AfG policy
  o Ensure BRF is representative of all impacted stakeholders
- Tri-annual audient of program/policy
- Careful communication to the local governments on policy; consideration of general public education