

## Schary, Claire

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**From:** Park, Chae  
**Sent:** Thursday, November 06, 2014 7:25 AM  
**To:** Schary, Claire  
**Subject:** FW: Article: National group working on water quality trading best practices

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**From:** Schary, Claire  
**Sent:** Tuesday, October 22, 2013 10:55 AM  
**To:** Croxton, Dave; Gable, Jill; Ryan, Mark; Bott, Dustan; Keenan, Dru; Park, Chae; Poulsom, Susan; Psyk, Christine; Rose, Bob; Stewart, William C.  
**Subject:** Article: National group working on water quality trading best practices

Team,

I just wanted you to be aware of this new article from Inside EPA that describes a national group that the Willamette Partnership is also involved in, so that you don't get it confused with our regional project. I would have loved to go to the meeting that they mention that is happening this week, but our travel budget is too small. I think OW's Bob Rose is going – maybe he can report back to us when he returns as to how it fits in with EPA's plans for trading.

### **Seeing EPA Limits, New Group Crafts Water Quality Trading Best Practices**

**Posted: October 22, 2013**

A new coalition of public and private-sector stakeholders is working to craft a best practices manual for dischargers seeking to trade water pollution credits, an effort intended to encourage the practice and overcome limits in EPA's current trading policy and legal uncertainty stemming from suits challenging the agency's power to approve trades.

The coalition, known as the National Network for Consistency & Integrity in Water Quality Trading, is facilitated by the World Resources Institute and the Oregon-based Willamette Partnership, and backed by the U.S. Department of Agriculture (USDA), the Electric Power Research Institute and the Johnson Foundation.

The network is holding its second meeting Oct. 22-Oct. 24 at the Johnson Foundation's Racine, WI, headquarters to begin the process of crafting best practices for water quality trading programs, sources attending the meeting say.

A wastewater utility source says that topics the network will discuss include: what an applicant for a trading credit must do to begin generating credits to enter a water pollution trading market; where trading can occur; whether there needs to be a regulatory load reduction plan, known as a total maximum daily load (TMDL) attached to a trading plan; whether participants can only buy trading credits in downstream waters; whether participants can engage in interstate trading, and how long a line of credit should last in particular situations.

The meeting will be attended by a broader group of stakeholders than the network's first meeting in May 2013, and will include participants from the sponsoring organizations, as well as EPA, states, water utilities and others, a source familiar with the meeting's agenda says.

This meeting will be "the first conversation of many" to begin the process of establishing a common set of best practices and common vernacular around water quality trading., the source adds.

Water quality trading is the practice where dischargers trade credits generated by reducing pollution below regulatory or other levels. It is one of a number of market-based mechanisms, including offsets, intended to provide alternative compliance mechanisms for dischargers.

EPA's 2003 policy generally allows point sources to exceed permit limits if they buy "credits" for pollution reductions made elsewhere - often at farms and other nonpoint sources of pollution, where runoff can be reduced at a cost substantially less than a wastewater treatment plant or other point source would face. But EPA has left it to individual states to craft trading policies, envisioning the agency's role under current law as largely advisory. This has raised doubts about trading among entities in different states that straddle large multi-state watersheds.

"We don't necessarily see that EPA would lead the effort to develop an interstate trading program," though the agency "would want to work with [states] to ensure that as they move forward, to ensure that the trading program they're developing continues to meet the requirements of the Clean Water Act," EPA's deputy water chief Mike Shapiro told the Senate recently.

### **Environmentalists' Concerns**

While many in industry favor trading, environmentalists are generally critical of trading regimes, with some arguing that they allow for regulatory exceedances in violation of the Clean Water Act, often in areas close to poor or minority communities. Some, like Food & Water Watch, charge that EPA lacks authority to allow trading.

The group is currently suing the agency over provisions in its load reduction plan for the Chesapeake Bay region, alleging that the agency unlawfully authorized trading in the TMDL.

EPA and allied industry groups are seeking to dismiss the suit, arguing that while the TMDL is a "final" action eligible for court review, the trading provisions are advisory for states and therefore is not eligible for review.

But the pending suit has nevertheless created significant legal uncertainty for EPA's policy and trading in general. EPA, for example, dropped plans to issue "technical guidance" on trading after environmentalists filed their suit. And the agency decided not to revise the policy after consulting with stakeholders in 2012 on "whether revisions could help increase adoption of market-based approaches."

Sen. Ben Cardin (D-MD), the chairman of the Senate environment committee's water and wildlife subcommittee, said recently that he is investigating the need for a legislative "framework" to support interstate water quality trading for nutrients and sediment, including the scope of EPA's role in trading agreements, an effort that may put EPA's water trading policy on a more solid legal footing as it faces lawsuits from some environmentalists opposed to the practice.

"EPA isn't ready to be talking about further guidance or clarification, but has a lot of interest in figuring out ways to connect and move [lessons learned through existing trading markets] forward, particularly as trading is getting more scrutiny," says the source with knowledge of the network's October meeting.

But others say there is a need for further clarifications and guidance, especially to encourage trading among entities in different states. For example, the Willamette Partnership -- one of the network's facilitators and a group that has worked to craft local and regional trading programs -- noted in a 2012 newsletter that only eight states have water quality trading guidance, "and there needs to be a way for states to quickly develop guidance that is consistent with their neighbors." The group said this is especially important in multi-state watersheds, like the Columbia River, Ohio River, or Chesapeake.

"Just as the 2003 [EPA] Water Quality Trading Policy promoted early programs, we believe this kind of multi-state guidance can give states the flexibility they need to address local needs, while also driving expansion in market activity by giving buyers and sellers the confidence to engage in water quality trading programs and easing the transfer of innovation across state lines," the group said.

The network will examine trading programs and guidance from many different states with established programs at the meeting: "Increasingly, what's missing is the mechanism to share all of the lessons learned and the experimentation that

has happened," the source familiar with the meeting says, adding that the meeting is "setting the table" for pulling together a "synthesis" of water quality trading best practices in the future.

### **Establishing 'Baselines'**

The source says that the question of establishing "baselines" is particularly important, because there is "not a lot of guidance" on how much nonpoint sources need to do before they can begin to generate credits, and many trading program participants think of the concept differently.

A wastewater industry source says that acceptable baselines have been established in individual permits in individual trading programs, "but what would a best practice be for setting a baseline level? What's the minimum a farmer would need to do before generating credits?" -- for example, planting a certain number of crops or owning a certain amount of livestock.

"This is the first conversation of many to establish this, it's not going to be an easy or quick process and I'm not even certain that it's possible that all of these groups can rally around best practices," the wastewater source adds.

The source with knowledge of the meeting says it will also be helpful to determine EPA and USDA's ability to engage in the process of developing a common understanding of water quality trading among stakeholders: "They believe it is an important endeavor; it builds upon their previous investments," such as the watershed-based plans that the agency funded during the Bush administration.

While those funds have since been cut from EPA's annual appropriations, the source says EPA's involvement in the network could provide "a really good leverage point [with appropriators] to make sure outcomes are happening." -- *Amanda Palleschi* ( [apalleschi@iwpnews.com](mailto:apalleschi@iwpnews.com) This e-mail address is being protected from spambots. You need JavaScript enabled to view it )

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