



EMBARGOED FOR RELEASE:
Friday May 25, 2012

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CPR Briefing Paper Warns of Pitfalls in Chesapeake Bay Water Quality Trading Approach

Failures of Other Regions' Trading Systems Hold Warning for Bay Planners

(Washington, DC) – A proposed water quality trading system for the Chesapeake Bay could serve only to delay progress if it lacks key safeguards, according to a new analysis from the Center for Progressive Reform. The report notes that trading systems in other regions have failed to improve water quality because unregulated agricultural sources chose not to participate.

"The Chesapeake Bay states are committed to trying trading as a more palatable, less expensive alternative for restoring the Bay," said CPR President and co-author Rena Steinzor, professor of law at the University of Maryland Carey School of Law. "While trading has that potential in theory, in practice it faces many pitfalls. One is that trading will be too loose, allowing pollution hot spots to develop. Another is that unregulated crop farms, a huge source of polluting nutrients in the Bay, could choose to sit out this grand experiment."

Steinzor and co-authors Nick Vidargas, Shana Jones, and Yee Huang write, "Although EPA has supported more than 50 water quality trading programs nationwide, few of these programs genuinely function because of design and implementation problems. For example, USDA economists have found that, of 15 trading programs that promote trades between point sources and agricultural nonpoint sources, only four have experienced any trades, and just two have experienced more than a handful." Such trades would be vital to the success of a Chesapeake water quality trading system.

The analysis, [*Accountability: Water Quality Trading in the Chesapeake Bay*](#), identifies a number of mission-critical elements of a trading system for the Bay, concluding that the system can only succeed if it incorporates each. They include:

Participation: "The best hope for successful trading," the authors write, "is to give all of the sources that contribute to the Bay's pollution crisis equal incentive to participate in distributing the costs of reductions more efficiently." Strong enforcement against regulated sources is crucial to the creation of those incentives.

Accountability: As with any trading system, one great challenge is ensuring that trading credits translate into actual pollution reductions, not simply paper savings. The states will need to establish credible monitoring mechanisms to ensure accountability.

Resources: "A trading program cannot be implemented on a shoestring budget," the authors write. "EPA and Bay states should plan for the necessary financial, technical, and personnel resources needed to monitor and oversee trading programs for the long term."

Hot Spots: "Regulators must prevent the formation of 'hot spots,' or localized concentrations of nutrients, that threaten public health or the environment in particular areas. Regulators should implement geographic restrictions on downstream, interbasin and interstate trades, unless the segment into which the buyer discharges meets water quality standards."

Traditional Regulatory Controls. A trading system cannot replace existing—and much needed—regulatory standards. Among other things, such controls create the incentive for polluters to participate in the trading program. In addition, "EPA should require the states to develop contingency plans to address how nutrients will be reduced if trading does not work or does not produce as many reductions as expected."

Transparency. EPA and the Bay states should publicly disclose trading data and information, thus allowing for better public oversight, trust in the markets themselves, and faster resolution of environmental and equity problems. "[T]o determine whether the sellers of credits are implementing promised pollutant reductions, EPA and Bay states must be able to monitor compliance with trade agreements and permit conditions. Only by measuring water quality can regulators tell whether pollutant limits are being met."

Says Steinzor, "My worry is that some of the enthusiasm about a trading program is about ideology, and not about cleaning up the Bay. If all we do is create a trading scheme, pat ourselves on the back and walk away, we'll fail. We've had plenty of back-patting and walking away over the years, and we can't afford more delay. A trading scheme needs to actually clean up the Bay, and if it doesn't do that, it should be scrapped, plain and simple."

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