Roundtable Issues Forum
Oglebay Resort & Conference Center
Wheeling, West Virginia
Wednesday, June 13, 2012

The Roundtable Issues Forum of Commissioners was convened by Chairman Duritsa who welcomed participants and provided an overview of the three items on the Roundtable agenda; Water Quality Trading, Water Resources Program Update and a review of ORSANCO's Committees. Chairman Duritsa asked Commissioner Stuart Bruny to provide the introduction for the first issue on the agenda, ORSANCO's Role in Water Quality Trading in the Ohio River Basin. Commissioner Bruny asked that as Commissioners listened to and participated in the discussions regarding water quality trading that they consider what role ORSANCO should have in the trading process.

All Roundtable presentations can be viewed at http://www.orsanco.org/technical-committee-and-commission-meetings-presentations/313-june-2012-presentations.

ORSANCO's Role in Water Quality Trading in the Ohio River Basin

Commission staff Greg Youngstrom provided the first presentation summarizing the concept of water quality trading and its potential use in the Ohio River basin.

There were many questions concerning the technical aspects of water quality/nutrient trading. The Electric Power Research Institute who is developing the program, has asked, and has envisioned answers to many of these. However, the true test of any of the technical components of the trading program will occur through the pilot trading phase of the program. Questions regarding cost vs. Best Management Practice and the inherent margin of safety and efficacy of each were asked. While the market will dictate the cost, a reserve bank of credits will need to exist in the event of a failure of a contracted BMP. Soil and water conservation districts may conduct the monitoring to assure reductions are occurring, however, this will represent a cost to the program which will have to be built into the management budget.

Regarding drivers for the program, i.e., will ORSANCO develop the drivers, such as nutrient criteria, or will the Gulf hypoxia issue become the driver, the proposed drivers maybe based in criteria compliance or from reductions established through TMDLs.

Regarding ORSANCO's role, the Commission, through its association with the project and EPRI, is supporting the development of a program that will be available if and when drivers are developed, and, by virtue of its efforts toward the development of nutrient criteria, is also in the process of developing potential drivers for the program. It is possible that the gulf hypoxia issue could become a driver in the Ohio valley, should EPA develop nutrient reduction goals for the lower Mississippi/Gulf of Mexico with the Ohio River receiving its portion of that goal which would then be apportioned between the states.

Regarding BMP-specific and credit-specific costs, these will be decided by the program in a free market environment and through a credit auction system. Credits generated during the pilot program will likely be cheapest as many will be subsidized by federal grants to this project. State requirements must be met first before trade credits can be offered, i.e., Kentucky has established minimum agricultural baseline BMPs for all farmers with greater than 10 acres. BMP efficiency estimates have been developed through models in use or developed by NRCS and USGS. Monitoring of some sort will still need to be conducted to affirm reductions are occurring.

Jessica Fox of the Electric Power Research Institute provided a comprehensive presentation of the trading program.

Procedurally, trading partners will not talk to or interface with each other. The broker will be responsible for holding and selling credits. Additionally, credits availability and purchases are envisioned to be available on line, so broker/buyer interaction should be minimal.

Trade-specific BMPs will be only those that have been vetted through the stake holder process, modeled and determined to result in quantifiable reductions. If a BMP does not meet these criteria, it will not qualify for trading credit.

A range of models are being used to address tiled field contributions and reductions. USDA and the NRCS are developing edge of field models with farmers. The number of credits required at point of compliance may change based on the type of BMPs being implemented upstream, which can possibly change the economic basis and feasibility of the program. Pilot trade results will help validate tiled field model assumptions.

The water quality trading approach is useful for rivers and streams, but not so much so for sections of small stream or river segments. It is not for quick, i.e., short-term fixes, and not for correction of point source or NPDES discharge associated problems.

Tim Lohner of American Electric Power then provided the group with the power industry's perspective of trading.

If trading cannot satisfy all nutrient related problems, i.e., compliance with stream criteria for ammonia, then costs for construction and operation of on-site treatment systems will need to be assumed by the company and passed on to the consumer. In addition, nutrient credits may not be purchased to offset emissions to the air shed; credits may only be used to offset surface water discharge loadings.

While watershed controls are the focus of this program, care needs to be taken to not allow the existence of "hot spots", i.e., elevated ammonia levels at river discharges. Much of nutrient control is or may be based on secondary effects, i.e., dissolved oxygen violations due to eutrophication, where a localized ammonia hot spot could kill fish directly. TMDLs and watershed based reductions could control the former, while the latter could still be an issue. Consideration and appropriate measures must be taken to prevent such.

It is envisioned that BMPs and associated reductions will be in place somewhere between 5 – 10 years, but this has not been confirmed. However, credits may come up for sale on a quarterly basis. The duration will be based on the effectiveness of the specific BMP. BMP term minima will affect only the seller, not the buyer. It will be the responsibility of the broker to assure the credit reduction obligations purchased by the buyer are fulfilled.

Brian Brandt of the American Farmland Trust next provided a presentation representing the agricultural industry's perspective.

Greg Youngstrom then provided closing comments to the session with the following comment: At the conclusion of the pilot trading period, if successful, the project will transition to a fully functioning market. At that point, EPRI will hand off the controls to another organization. There are potential roles for ORSANCO in the operating market. Project partners have expressed an interest in ORSANCO assuming responsibility for the project. The Commission is viewed as the logical entity to assume the controls. Other trading programs have managed to generate program costs through the costs of credits.

Large markets such as this utilize a clearinghouse type process. There are several examples throughout the country of non-profits successfully managing similar trading projects.

Questions remain regarding the Commission's legal authority under the Compact to enter into, participate or manage this type of program. In addition, concern was expressed regarding any negative consequences vis-à-vis our relationship with either the states or federal partners were the Commission to engage substantially in the program. Legal counsel would be asked to look into the former issue.

Regarding the costs associated with running the program, all processes and procedures, models, etc. necessary to operate the program are envisioned to be in place at the completion of the pilot period. As such, the operational costs should not be onerous; however, no operational cost estimates have been calculated at this time. The process will be as automated as possible.

If a credit defaults a pool of 20% reserve credits will be available to guard against defaults to assure reduction goals are met. The credit registry will be driven by the market registry, i.e., the greater the demand, the more credits will become available.

In all instances, the purchaser will be liable for meeting all discharge requirements regardless of viability or availability of the credit market. An appropriate balance between capital investment/credit purchases and attainment of permit requirements/limits will remain the obligation of the discharger/purchaser.

All BMP model designs will have to meet NRCS practice standards and be verified by a 3rd party. Costs associated with model development and validation will initially be subsidized, resulting in roll out credits being substantially below actual market value. The cost of future BMP evaluations will need to be covered by the credit transaction fees.

During the pilot period, credit offers will not require public notice. When transitioned to full scale, there will probably be a public notice obligation.

At present, the agreement to enter into this interstate trading program has been circulated to appropriate state directors and has received a high level of support. A signing ceremony appears to be in the offing. *(A signing ceremony was held August 9th. All states participating in the pilot project, Indiana, Ohio and Kentucky, signed in support of the program. – ed.)*

Nutrient BMPs are not type specific as ratios of nitrogen to phosphorus can range from 5:1 to 18:1. The program is designed to lower the overall cost of nutrient management/removal, not type specific removal.

At the heart of the issue the question regarding ORSANCO's role remains: the technical issues will be resolved in pilot stage; the states themselves can't be regulators and brokers as well; if ORSANCO doesn't do it, who will and will the states and the process be better off or worse off with someone other than ORSANCO serving as manager or broker? The program can't survive on own, such as other, smaller programs do. This program represents a tool that the states will allow to be used to help lower environmental compliance costs. If ORSANCO does not assume control, could the Foundation (FORE) administer the program? That way, it would still be aligned, but independent, of ORSANCO.

Commissioner Bruny brought the discussion to a close, stating that the Commission's Water Quality Review committee invites comments from Commissioners on this issue.

Water Resource Program Update

Commissioner Potesta provided an overview of the status of the program starting with discussions held at the Water Resource Committee's last meeting. Topics of discussion at that meeting were the development of ecosystem flows and the status of the Memorandum of Understanding. Commissioner Potesta deferred to staff liaison Sam Dinkins to provide a more in-depth presentation of the program status.

At present, the program needs $85k to receive all money that has been pledged by the contributing foundations. While many new foundations have been approached, such as the Nippert Foundation in Cincinnati, none of these efforts have been successful in obtaining any or all of the needed $85k. The option of pursuing funds from Ohio River industries is not considered highly desirable as the Commission links to these industries to support the Ohio River Sweep, the Ohio River Users Program, and the Foundation for Ohio River Education, etc. Efforts will continue to identify other funding sources for the water resources program.

Paramount to the success of the program is the signing of an agreement between the Governors endorsing ORSANCO's role in interstate water resource management issues. In most states, the MOU as drafted by the Committee has been provided to the directors of the state water resource programs for advancement to the governors. The committee members are pushing the signing of the MOU which is needed to confirm ORSANCO's continued work in water resource management and as an essential component necessary in order to access state funding. This needs to be accomplished ASAP as the program cannot wait until the studies are completed, as the foundation money will have been exhausted at that point. If the Governors chose not to sign the MOU, the program may well come to a halt. The studies are just now starting, and the process cannot wait until they are finished in order to use the studies as a marketing tool. In addition, several of the foundations keenly interested are looking to the receipt of a signed MOU.

If the remaining $85k is not acquired, the studies have been structured in a tiered approach, which will allow for the completion of Foundation required objectives. The Water Resources committee invites any and all comments and particularly suggestions relative to other funding opportunities.

Committee Organization and Structure

Executive Director Peter Tennant provided an overview of the Commission's Committee's and Committee structure.

While the Commission is replete with committees, all serve a purpose. Those committees that may be listed, but inactive, continue to exist on paper (at no cost) should their members or the committee as a body need reactivation, i.e. chemical industry advisory committee. The only Standing Committee that has been looked to as possibly needing a sunset review is the Executive Committee, as it has been quite some time since a meeting of this committee has been convened. However, this may be due to the availability of committee members through email or conference call, as opposed to a face to face meeting. Sentiment expressed by several commissioners was strong regarding the continuation of this Committee as it provides both the Executive Director and Chairman quick and direct access to a subset of Commissioners to assist in decision making.

Mr. Tennant concluded his remarks. He will undertake further discussion of Committee assignments and the Committee needs with incoming chairman Komoroski.