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Will Chesapeake Bay Pollution Credit-Trading Program Trade Away Fairness?

New CPR White Paper Raises Serious Environmental Justice Concerns

Washington, DC — Maryland, Virginia, Pennsylvania and other states in the Chesapeake Bay region, with support from the Environmental Protection Agency, are working toward developing a water quality credit-trading regime intended to help meet federal pollution limits for the Bay. But a new white paper from the Center for Progressive Reform (CPR) warns that even if a trading system succeeds in reducing overall pollution in the Bay, it might still have a dire effect on low-income and minority communities in the Bay region.

The Bay state trading program would allow certain sources of pollution to generate credits by reducing their pollution, and allow other sources to purchase those credits. Most polluters, including industrial facilities, sewage treatment plants, and others already receive permits to pollute up to specified limits. Under a trading regime, if polluters exceed their limits, they would be able to buy credits from polluters elsewhere in the region that emitted less pollution than their permits allow. The intended result is a market for credits that would allow certain pollution sources to profit by polluting less, and producing an overall reduction in pollution. One objective of the program would be to create an incentive for agricultural sources of pollution to make pollution reductions. Many of these sources are not regulated, but collectively they account for a huge share of Bay pollution.

The problem, according to [the CPR white paper](#), is that the resulting trades could concentrate pollution near poor and minority communities, threatening the health of residents. Similarly, the paper warns, the credit-trading programs do nothing to ensure that the benefits of pollution reductions are shared by poor and minority communities.

"Credit-trading may be politically palatable to both Republican- and Democratic-controlled governments in the states," said CPR President Rena Steinzor, co-author of the white paper and a law professor at the University of Maryland Francis King Carey School of Law, "but that can't be the only measure. We should judge a trading regime by whether it will actually contribute to cleaning the Bay, and whether it will be fair to all of the Bay states' residents, not just the whitest and wealthiest."

The paper warns:

If trading programs are not carefully designed and monitored, trading can cause localized concentrations of nutrients and accompanying contaminants in local waters, posing a significant threat to human health and aquatic ecosystems. For example, a sewage treatment plant could

address its additional pollution by either purchasing reductions elsewhere or by installing control measures onsite. If the plant purchases credits, it will be able to discharge more sewage. These additional discharges may create “hot spots” or high concentrations of pollution in adjacent waterways that could expose residents of nearby communities, especially local fishermen and their families, to pathogens and other harmful co-pollutants...

Effective trading programs also rely on ample credit-generating activities. Municipalities may generate credits by implementing stormwater best management practices (BMPs) such as urban revegetation, bioswale construction, and greenspace expansion. These practices have secondary benefits for the communities in which those BMPs are implemented, including flood control, enhanced opportunities for exercise and recreation, increased property values, and aesthetic value. Such benefits should be enjoyed equally, throughout the watershed.

The paper offers a number of specific recommendations, including:

- **Make consideration of EJ issues explicit.** Bay states should be required to document how they will consider environmental justice concerns as they develop trading programs. Currently, only Pennsylvania mentions environmental justice in its trading policies.
- **Avoid "hot spots."** Bay states should incorporate into their plans components that would help avoid or alleviate hot spots, including geographic restrictions on trades (such as a preference for upstream trades, in which credit purchasers can only trade with upstream sellers) and timing restrictions that limit when credits may be used, because watershed pollution is worse during particular times of year.
- **Inform and empower communities.** EPA and the Bay states should keep low-income and minority communities informed about developments in trading programs and the potential impacts on people living in the Bay region, and the states should invite low-income and minority stakeholders to participate in decisions about trading-program design and operation.

Steinzor's co-authors on [Fairness in the Bay: Environmental Justice and Nutrient Trading](#) are CPR Member Scholar Robert Verchick (professor of environmental law at Loyola University, New Orleans) and CPR Policy Analysts Nick Vidargas and Yee Huang.

Now marking its tenth anniversary year, the Center for Progressive Reform is a nonprofit research and educational organization of working academics dedicated to protecting health, safety, and the environment through analysis and commentary. Visit CPR on the web at www.progressivereform.org and read CPRBlog at www.progressivereform.org/cprblog. The report is available at http://www.progressivereform.org/articles/WQT_and_EJ_1208.pdf.

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