

Summary of the April 17, 1998 Water Quality Trading Workgroup Meeting

A list of workgroup members who attended the meeting and handouts are attached. Sreedevi Yedavalli, Peter Swenson, and Steve Chan, Region 5, United States Environmental Protection Agency (EPA) participated by conference call.

At the beginning of the meeting, Mr. Jeff Edgens, Michigan Farm Bureau, announced that he accepted a position with the University of Kentucky. Members of the workgroup expressed appreciation for his participation on and input to the group.

The attached summary of the March 13, 1998 meeting was approved without revisions. Revisions in Draft #3 Strawman rules were discussed. The group suggested that nontechnical terms and cited regulations be included to make the rules "user-friendly".

The workgroup agreed to expressly allow trading for conventional pollutants (total phosphorus, total nitrogen, total suspended solids, biochemical oxygen demand, and carbonaceous biochemical oxygen demand) and other pollutants approved by the Department on a case-by-case basis. The Draft #4 has been revised to incorporate these recommendations.

The EPA staff summarized anti-backsliding regulations. Section 402(o) of the federal Clean Water Act (CWA) restricts the relaxation of a technology-based or water quality-based effluent limitation specified in a National Pollutant Discharge Elimination System (NPDES) permit. Section 402(o) provides that water quality-based limits can be made less stringent "consistent with state antidegradation policy". The EPA stated that "trades should not result in over allocation of the receiving stream". The Surface Water Quality Division (SWQD) staff pointed out the advantage of not having to go through permit modifications for each trade. The EPA and SWQD staff identified the need to be able to track trading and determine compliance with the Permit Compliance System (PCS). Under the existing system each trade would show up as noncompliance. Changes to the PCS are necessary to allow the use of credits for compliance with NPDES permit limits. The EPA offered to look into current initiatives to modify PCS and to provide SWQD staff with a contact person.

The EPA also discussed stormwater best management practices (BMP). Current EPA policy calls for implementation of a stormwater management plan. This plan would specify the mix of BMPs to be implemented under an NPDES permit. Compliance is determined on the basis of whether the BMPs in the plan are implemented. This mix and the reductions achieved would serve as the baseline for stormwater management. The EPA also pointed out that the BMP mix specified in a municipal stormwater management plan is deemed to constitute the maximum extent practicable, a technology-based standard. The EPA pointed out the importance of implementing the BMP mix to quantify loading reductions achieved in practice. The EPA felt that a change in the BMP mix which resulted in increased loadings would constitute backsliding. The EPA also indicated that changes made to the BMP mix outside of a permit would trigger antidegradation. The group discussed how trading could drive better BMP selection and implementation, improve quantification, and facilitate implementation. The EPA was receptive to the concept of changing a BMP mix to generate stormwater reduction credits after a baseline of operation to define MEP and quantification of loading reductions actually achieved. A two-year period was discussed. The general consensus of the group was that trading could improve stormwater control performance and reduce costs.

The rest of the meeting focused on open and closed trading issues. The group felt that closed (cap and allocations) trading is appropriate for waters which do not meet water quality standards. In these areas trading would be done under, or consistent, with a cap established by a total maximum daily load (TMDL) or a remedial action plan (RAP). The point source and nonpoint source baselines for credit generation and use under a TMDL would be the wasteload allocations

and load allocations, respectively. The group also supported closed trading in waters where standards are being met and for which a community-based watershed management plan has been established to maintain high water quality while accommodating and regulating growth and development. Changes will be made to the draft rules for discussion at the next meeting.

The group made a distinction between high quality waters and waterbodies which are meeting standards but for which the assimilative capacity has been fully, or almost fully, allocated. A decision was made to allow open trading for the "fully allocated" waters to be listed in the rules. It was recognized that the rules would need to have a provision for periodically relisting waterbodies. For high quality waters and "fully allocated waters", the consensus of the group was that the use of credits would not constitute antidegradation under R 323.1098(7)(k) provided there are contemporaneous upstream reductions for downstream uses.

Members of the group also pointed out examples of where upstream reductions for downstream use (directionality) and contemporaneous reductions would not be necessary to protect water quality and would depress trading activity. One such example would be several point source dischargers to a receiving water tributary to a Great Lake. If each of the dischargers has a 1.0 mg/l limit to protect the Great Lakes, the directionality of a trade between these sources would not matter as long as the use of credits did not result in a localized violation of water quality standards or adverse designated use impact.

Another approach to protecting high quality waters is to require an antidegradation demonstration. This approach could be used to allow "non-directional" or intertemporal use of credits and assure that there is no lowering of water quality in the receiving waters. The antidegradation demonstration would be conducted pursuant to R 323.1098(4). Exemptions could also be provide under R 323.1098(8). Changes have been included in the Draft #4 strawman to incorporate these concepts.

The group recognized that the use of credits to comply with a seasonal water quality-based effluent limitation could cause a water quality impact. The general consensus of the group is that credits used to comply with a seasonal limit should be generated during the same season. These changes are included in Draft #4.

A task force was created to provide recommendations back to the workgroup on this issue. Members of the task force include: Charlie Bauer, Elaine Brown, George Davis, Holly Madie, Rebecca Maure, and Jim Ridgeway.

The next meeting will be held at Michigan Farm Bureau on May 11, 1998. This meeting will start at 10:30 a.m. (agenda attached). The following meeting will be held at the Michigan United Conservation Club office on June 5, 1998.