

Summary of the August 12, 1998 Water Quality Trading Workgroup Meeting

This meeting of the workgroup was held in the Shiawassee District Office. A list of those who attended the meeting is attached. The enclosed documents were provided at the meeting: DRAFT Water Quality Trading Rules Agricultural Subcommittee, 6/23/98; Draft Rule 10 Revisions; Comments On Trading Documentation (A. Brenner, 8/11/98); Water Trading Comments (R. Maure, 8/4/98); Michigan Water Quality Trading Workgroup Storm Water Trading Framework (K. Cave, Draft: July 7, 1998); Thoughts About The Mechanics Of Banking.

The DRAFT July 7, 1998 meeting summary was approved and has been finalized (attached).

The chair of the group briefed the group on recent discussions with Region V and US EPA staff regarding the trading framework being developed by the workgroup. A memorandum is enclosed which summarizes that meeting (D. Batchelor, DRAFT 8/6, 1998). In brief, EPA supports the concepts of open trading to improve water quality in attainment waters, closed TMDL-based or -equivalent trading to achieve water quality standards in nonattainment waters, the use of trading ratios which result in a net loading reduction to provide a water quality benefit, the institutional framework for nonpoint source accountability, incorporating antidegradation provisions in the rules and trading on a watershed basis. Some key issues which will need to be worked through include: open trading to reduce pollutant loadings in nonattainment waters for which a TMDL has not yet been developed, determining the baseline for urban stormwater discharges, how to incorporate trades in NPDES permits, and the mechanism for state trading program approval by federal rulemaking.

Workgroup members commented that open nonattainment trading pending TMDL development or as part of a phased TMDL implementation strategy is vital to achieving water quality standards and sustaining local economies. This issue has come up in the Kalamazoo River Water Quality Trading Demonstration Project. Another workgroup member commented that the environmental position that reissuance of NPDES permits with hold the line limits pending TMDL development is not consistent with the way EPA and many states are currently operating permit programs. This is a critical issue for trading as well.

Ms. Kelly Cave provided a presentation of the urban nonpoint source framework recommended by that subcommittee. The framework calls for splitting urban stormwater into 2 categories: permitted and unpermitted. Permitted sources would include urban stormwater in communities regulated under federal regulations (Phase I and II) and industrial stormwater sources which are covered under an NPDES permit. The unpermitted category would basically include all stormwater sources which are not currently regulated. Ms. Cave explained the implications of EPA stormwater regulations (Phase I and II maximum extent practicable/best management practices) as they may be applied to trading. Whether trading can occur will be determined by EPA policy. If MEP as defined by BMP is considered to be a technology-based limit, then trading may not occur. If the presumption is made that the technology-based MEP, as defined by BMP, is sufficient to meet water quality standards, then trading could occur based on the mix of BMP's specified in the stormwater management plan under an NPDES permit. It was decided that Ms. Cave and the chair would contact EPA for comments on the proposed framework and the quantification protocol that is also being recommended by the subcommittee. The workgroup adopted the approach, framework and quantification protocol recommended by the subcommittee. Ms. Cave suggested that the subcommittee take comments and discussion under advisement and draft some rule language for consideration at the next meeting. This would include credit life and "development". The workgroup agreed.

The issue of what the baseline should be in urbanizing areas. Should the baseline be the loadings from undeveloped land which may have little if any runoff? Or, should be baseline be post-development loadings which would not be controlled under existing regulations? The example used in this discussion was farmland which is developed into a residential, industrial or

commercial use. Should credit be allowed for controlling the runoff that would occur during and after development, or should credit be allowed only by reducing loadings that occur from the site prior to development? A couple of suggestions were offered on how to address the issue. One is to address the baseline for development in urbanizing areas by establishing a baseline land use year. Under this approach the baseline for urban runoff would be loadings associated with land use activities during the baseline year. There was support for this approach within the group for the following reasons. Urban sprawl would not be rewarded. Credit generation would be more difficult in urbanizing areas. It would encourage loading reductions (credit generation) with existing land uses and in older urban areas. The concept that post-development should be better or at least as good as pre-development conditions. It would encourage brownfield redevelopment. This issue was deferred for discussion at the next meeting.

Ms. Kelly Cave explained the rationale for suggesting that the baseline for permitted stormwater sources be "the end of the permit term". This would require sources to implement the mix of management practices specified in the stormwater plan included in the permit. Sources would then have the date (cost/control) to evaluate effectiveness and then change the mix of management practices (trade) under the next permit. This approach would address EPA concerns about what is achieved in practice. It was also pointed out that this approach would not encourage early reductions.

A question was posed to the department. How will the agency view stormwater MEP/BMP, as a technology-based or water quality-based limit? The chair agreed to take this issue under advisement and report back the workgroup at the next meeting.

There was discussion on whether to include land use loading coefficient tables in the rules or in guidelines. One option for which there was general support was to include "default" tables in the rules with a provision for other coefficients to be used upon agency approval.

The workgroup shared perceptions about what constitutes a "bank". There was a common understanding that a bank is a "centralized" "repository" for credits. Some thought of credits in a bank as having been pre-approved by a regulator agency. To others, a bank or "banking" implied the intertemporal use of credits and additional transaction costs being associated with trading. It was observed that certain rules may apply to a bank under federal security exchange regulations. Several thought of a registry as being an informal type of bank.

Some distinctions were made that a registry is consistent with the agency discharge monitoring report (DMR) data base and that from an administrative perspective it would provide accountability and enforceability.

The concept of a department maintained trading registry, in lieu of a state-operated, regulated or privatized bank, was approved by the workgroup. There was brief discussion and general support for a 5 year credit life in conjunction with the registry. This issue may be discussed further.

The agricultural framework and specific rule language recommendations from the agricultural subcommittee were presented by Mr. Charles Cubbage. The recommendations were adopted by the workgroup.

The agricultural subcommittee will provide recommendations on a window/sunset provision, the eligibility of nonpoint source reductions derived from public funds, and a framework for determining compliance and enforcement at the next meeting.

The next meeting was scheduled for September 24, 1998. The meeting will be held at the Michigan United Conservation Club office and will begin at 9:30 am. The agenda is enclosed.

DRAFT #8 Rules which contain the rule language recommended by the agricultural subcommittee and adopted by the workgroup are enclosed. No other substantial changes have been made, but the bold strikethrough revisions from previous drafts have been deleted.