

December 17, 1998 Meeting Summary

This meeting was held at the offices of ECT, Inc. A sign-in list was not circulated. Those in attendance at the meeting included: Mark Kieser, Jim Ridgway, Joe Staph, Pete Maciejewski, Rebecca Demchak, Chuck Cabbage, Ted Starbuck and Kelly Cave. The group approved the November meeting summary without revisions.

The group agreed to revise the discount factors in Rule 13. The discount factor for distance will be deleted. The discount factor to address the presence of an any impoundment or lake will be revised to apply to any pond, lake or impoundment with a retention time greater than 1 week. An additional quantity of credits ten percent (10%) greater than otherwise needed to comply with a water quality-based effluent limitation will be required where the user source is located below an impoundment and the generator is located above the impoundment. The group decided to replace the discount factor for the use of nonseasonal credits to comply with a seasonal limitation with a requirement that credits used to meet a seasonal limit must be generated during the same time period. The group also agreed to establish a ten percent (10%) discount factor for credits that are used in a nonattainment area for which a TMDL has not been established. This was done in response to several EPA comments on the draft rules.

The group reaffirmed its previous recommendation on the eligibility of publicly funded NPS reductions. For agricultural programs administered by the USDA-NRCS, any local match equal to or greater than that required under the program will be eligible to generate credits. This recommendation is a compromise between no credits being allowed or all credits being allowed. It is consistent with the long-term goals of these programs, to promote and provide incentives for sustainable agricultural practices that improve water quality or benefit the environment.

Funds obtained under federal grants exclusively to benefit the environment or improve water quality will not be eligible to generate credits that may be traded or used. This would apply to reductions achieved by projects funded under Section 319 of the CWA.

The group also agreed that public funds raised by a municipality and used in the same jurisdiction should be fully eligible to generate credits that may be used or traded.

Rebecca and Kelly agreed to review the industrial stormwater baseline and definition sections of the rules to be sure that it works for industrial sites that have been issued an NPDES permit. They offered to provide comments to me in time to be included in the next draft of the rules.

The remainder of the meeting was spent discussing EPA comments and revisions to the trading framework that was being recommended by the Steering Committee and the workgroup.

The group agreed to remove technology trading from the rules. This is a major approvability issue for EPA and opportunities for trading in Michigan are limited. The one area where this could provide substantial economic and environmental benefits may be in the iron and steel, chemical manufacturing, utility power generation, pulp and paper and oil refining categories. For those sources with multiple outfalls that discharge directly to the Great Lakes or major connecting waters, the department may recommend pursuing intra-plant trading as suggested in EPA's Draft Framework for Watershed Based Trading. The issue will be taken to the Steering Committee in January.

The group agreed with EPA's position on concentrated animal feeding operations. The opportunities for CAFO's participation in trading will be limited to implementing management practices and control measures beyond those required under federal regulations and specified in a manure management plan approved under a permit. The effect of this recommendation will be to limit the generation of credits by implementing BMPs beyond those required to eliminate direct

discharges and the application of fertilizer and manure at agronomic rates. Buffer strips, crop rotation and tillage practices may still be eligible for credit generation. CAFO's would not be able to use credits to meet any federal requirements or permit conditions.

Animal feeding operations not regulated under the CWA would be able to participate in trading as any other NPS.

The workgroup agreed with the position being recommended by the SWQD on the applicability of the Coastal Zone Act Reauthorization Amendments (CZARA). EPA's position is that NPS management measures specified under CZARA guidelines are technology requirements. As such credits can not be used to meet these requirements. To generate a credit, NPS would have to achieve reductions beyond those that would be achieved through implementation of the CZARA management measures. This would leave nothing left to trade.

The effect of EPA's comments would be to create an unlevel playing field for trading. NPS in on part of a watershed would be required to implement CZARA measures, others would not. This approach also turns a voluntary federal program into a mandatory requirement for which federal funds are not available. Trading is an instrument that could make implementation of CZARA measures economically feasible. The group felt that the focus should be on water quality, not a one-size fits all regulatory approach. The group agreed that CZARA should not be used to set the baseline for NPS credit generation and that NPS should be able to use credits to meet CZARA requirements.

EPA's position is that it is premature for urban stormwater trading to occur. The primary reason cited by EPA is the lack of adequate information to define the maximum extent practicable (MEP) technology requirement. The SWQD and workgroup see trading as an instrument to provide flexibility, encourage implementation of stormwater control practices and controls and significantly reduce the cost of reducing urban stormwater pollution. This is the most important opportunity for municipal participation in trading. Trading is a means of better defining the relationship between technology-based and water quality based requirements. The approach being recommended by the workgroup is to consider the mix of urban stormwater control/practices in a stormwater management plan as water quality requirements for which trading could occur. The were concerns expressed that EPA's regulatory approach will delay and significantly increase the costs of implementation.

The group agreed that trading to implement TMDLs was vital. EPA commented that open trading in nonattainment areas pending the development of a TMDL is not acceptable. The group felt this might be the single most important regulatory driver for trading. Many believe that trading to implement TMDLs is vital to a phased implementation strategy and the economic feasibility of achieving the reductions that will be required under TMDLs. The group recommended pursuing the ability to trade to implement TMDLs pending development and as part of a statewide implementation strategy.

The rules that EPA commented on contain three tiers of trades. Trading for nutrients (tier I with minimal agency oversight), trading for other conventional trading pollutants (tier II on a case by case basis with prior agency approval) and other types of trades (cross watershed, nonconventional pollutants and trades that may not be anticipated today on a case by case basis with prior department and EPA approval where federal permits are involved). The workgroup decided to simplify the rule by having two types of trades, nutrient trading and other types of trades. Nutrient trading would be limited to total phosphorus and nitrogen and could occur under the rules without a case by case prior agency review and approval. The second types of trades would include other pollutants (BOD, CBOD, and TSS), cross pollutant trades (P for BOD), the use of banked nutrient credits and all other trades not specifically mentioned in the rule. All of these trades would require a case by case review and approval by the department and would be subject to EPA veto where an NPDES permit is involved.

The workgroup felt that these changes are responsive to EPA comments and should be included in the recommendations to the department and Steering Committee. The next draft of the rules will contain these revisions, unless the department or Steering Committee does not adopt them. The Steering Committee meets on January 21, 1999, so the next workgroup meeting was scheduled for February 17, 1999. It will be held in Lansing at Michigan Farm Bureau. The meeting will begin at 9:30 am and run till 4:00 pm. SWQD staff will provide a summary of the Steering Committee meeting and recommendations and proposed rule revisions to address EPA comments will be reviewed.