

## **Summary of the July 7, 1998 Water Quality Trading Workgroup Meeting**

Vacations are great! They provide an opportunity to relax and refresh, not to mention forgetting and misplacing things which seem so important in the workplace. This is what seems to have happened to the list of those who attended the meeting. Mr. Peter Swensen, Region V United States Environmental Protection Agency (EPA) participated by conference phone. Several documents were handed-out at the meeting: Draft #7 Rules (7/98), Rule Index - Draft #7 (SWQD, July 2, 1998), Water Quality Trading Framework Rule Reference (SWQD), Point Source Water Quality Trading Scenario (SWQD), Water Quality Effluent Trading (P. Maciejewski, 5/26/98), Water Quality Trading Workgroup (W. Creal, 6/12/98). Copies of these documents are attached to this summary.

The meeting began with an apology from the chair. The importance of facilitating open discussion within the group was acknowledged and members of the workgroup were asked to help out in this regard. The chair reviewed the trading framework that has been approved by the department and the Governor's Steering Committee and was adopted by the workgroup early on. The process for recommendations outside the trading framework were reviewed. The importance of documentation by written comments and specific recommendations was mentioned.

Individual members of the workgroup were then asked to offer comments. The complexity of issues, political considerations and everyone coming to the table with their own framework was expressed. Support for market-based incentives to improve water quality and effect behavioral changes was stated. Several members suggested focusing on the process of starting simple, walking through a specific example and focusing on the big picture. The importance of rules and recommendations leading to a "useable" program was brought up.

Following an exchange of comments and group discussion, the Draft June 5, 1998 meeting summary was approved without change.

A suggestion was made that the rules have language added to the effect that "nothing in the rules should be construed to prohibit a municipality from developing and implementing a pretreatment trading program". This change will be made in the next edition of the draft rules.

The group walked through the attached Water Quality Trading Framework - Rule Reference to review and discuss whether there is still agreement on the trading framework. General consensus and support for the framework was affirmed with the understanding that anyone on the group may provide written comments and recommendations outside of the framework at any time. Members of the group acknowledged the need to be familiar with the framework and how it is embodied in the draft rules. This common point of beginning will help build understanding and facilitate communications. The process adopted by the workgroup for making recommendations which deviate from the approved Trading Framework was reviewed.

Mr. Peter Swensen provided an overview of the EPA comments on the draft rules. He pointed out that the EPA staff comments were primarily from a permit perspective. The discussion followed the order of EPA's Draft 6/1/98 written comments which were included in the last workgroup mailing.

Discussion on technology-based trading focused on urban stormwater. The technology-based requirement of "maximum extent practicable (MEP)" will be defined by the mix of best management practices (BMP) specified in a stormwater management plan developed in conjunction with a national pollutant discharge elimination system (NPDES) permit. BMP may be defined in the permit to be either technology-based or water quality-based. Trading for water quality-based BMPs may be acceptable once a performance base line has been established. MEP is a level of effort standard which will be established for each municipality and set of

management practices specified in the stormwater plan. EPA was asked whether trading could occur between two municipal units where in Unit 1 MEP/BMP is street cleaning and combined sewer overflow (CSO) and in Unit 2 MEP/BMP is a series of wet ponds. Could excess measurable wet pond reductions be traded? EPA indicated that trading for water quality requirements would be possible after MEP has been defined.

EPA's position is that open trading for pollutants for concern in nonattainment waters should not occur until a TMDL has been developed. Trading under a remedial action plan or lakewide area management plan would not be acceptable to EPA unless the RAP or LaMP include a cap and wasteload/loading allocations for all sources which would engage in trading. EPA affirmed that trading under a RAP or a LaMP is conceptually consistent with EPA's Draft Framework For Watershed-Based Trading (EPA Framework).

Nonpoint source (NPS) accountability needs to assured for EPA to support trading. "Reasonable assurances" for public participation and be enforceability must be provided. EPA indicated that enforceability may be addressed by permit conditions, compliance tracking and third -party enforcement.

EPA indicated that the generation and use of credits should be contemporaneous and occur on a watershed specific basis. EPA indicated that point source discharge quantification protocols used to determine compliance with existing permit requirements would be acceptable for trading. EPA was asked what NPS quantification protocols the agency would be looking for in rules. EPA responded by saying that this issue is an area for future discussion.

The pretreatment trading issues raised by EPA are moot because the provisions for pretreatment trading have been deleted from the draft rules.

Several members of the workgroup commented that shutdowns and curtailments should be eligible for trading.

EPA raised a question as to whether a 10% retirement of point source credits generated by one source and used by another point source would be adequate to compensate for frequent use. The concern is that a source might use credits on a regular basis to avoid upgrading of the installation of process modifications/controls which otherwise would be required. EPA is concerned that 10% may not be an adequate margin of safety. Individuals from the group responded by saying that this should not be a problem since the rules require surplus reductions and prohibit the use of credits which would result in a violation of water quality standards. It was also pointed out that the concern over one source would likely be offset by the overall level of trading activity. The more trades, the greater the overall reduction and environmental benefit. The use of credits to meet discharge obligations in the most cost effective manner is precisely what trading is all about. Restrictions on the frequent use of credits will decrease market activity and the benefits that trading has to offer.

EPA indicated that revisions to the NPDES permit program are required under 40 CFR 123.62 for trading to occur.

After the conference call with EPA, the workgroup members were asked to provide written comments on EPA's comments and discussion which took place at the meeting.

Mr. Charlie Bauer provided the chair with a document entitled, "DRAFT Water Quality Trading Rules - Agricultural Subcommittee, 6/23/98 (attached). Copies were not available for the group. Mr. Bauer presented and lead discussion on the recommendations from the subcommittee. There was considerable discussion over what constitutes an illegal discharge and whether measures taken to control or eliminate manure runoff or nonpoint sources of fertilizer application should be

eligible to generate credits which could be traded. The consensus of the group is that these are the very type of reductions that should occur and that they should be eligible for trading. Mr. Bauer offered to revise the recommendations to be consistent with the consensus of the workgroup. He may submit a minority report to help document concerns discussed at the meeting. Other members of the workgroup were asked to provide comments on the draft recommendations if they so desire.

A suggestion was made to ask EPA to review the "Pollutants Controlled Calculation and Documentation" document that is being recommended to establish baseline operations and loadings from agricultural NPS. The chair agreed to do so.

Ms. Kelly Cave presented an overview of the Working Draft Urban Nonpoint Source Quantification Protocols, 16 April 98. The group was asked to review the document and come prepared to discuss this issue in depth at the next meeting.

The next meeting was scheduled for August 12, 1998. It will be held in the Shiawassee District Office which is located in Perry, Michigan. A meeting agenda and location map are attached.