

Summary of the May 11, 1998 Water Quality Trading Workgroup Meeting

A list of the workgroup members who attended the meeting is attached. Ms. Scree Devi Yedavalli, Region V, United States Environmental Protection Agency (EPA) participated by conference phone. A corrected first page of Draft #4 Rules and a document entitled Water Quality Effluent Trading, Trading of Non-Listed Pollutants (P. Maciejewski, May 8, 1998) were handed-out at the meeting and are attached to this memorandum.

The DRAFT April 17, 1998 Meeting Summary was reviewed. Several corrections were recommended and have been incorporated in the attached finalized meeting summary.

The group spent the remainder of the meeting discussing revisions to Draft #4 Rules. Draft #4 Rules include provisions for three types of open trading and two situations where closed trading could occur. The general approach is to allow certain types of open and closed trading to occur without prior department approvals and to allow more complex or different types of trades to occur only after approvals have been obtained. Rule 5(1) provides that open trading could occur where water quality standards are being met and where either of the following conditions exist:

1. Contemporaneous directional trading. There are contemporaneous upstream reductions to compensate for downstream use. This would be protective of high quality waters and would not constitute a lowering of water quality. An anti-degradation exemption or demonstration would not need to be made before trading could occur.
2. Contemporaneous non-directional trading. This could occur where all sources which trade are located above a site for which water quality-based effluent limitations have been established to maintain water quality standards. The effect of such trading would be a net reduction in loading above the site for which WQBEL serve as the baseline for credit generation and use. This type of trading could occur between sources located on a water body for which the assimilative capacity has been fully allocated or where sources are located upstream of a lake for which WQBEL have been established. An anti-degradation exemption or demonstration would not need to be made before trading could occur.
3. Intertemporal and non-directional trading. This type of trading could be done only by showing social and economic benefits would be foregone without trading pursuant to R 1098(4) or that the use of credits would not constitute a lowering of water quality under R 1098(k)(7) or (8). This type of trade could only occur after an anti-degradation demonstration acceptable to the department.

Rule 5(2) provides that closed trading on a pollutant-specific basis could occur where water quality standards are not being met. Closed trading would be required to occur in a manner consistent with a total maximum daily load (TMDL) or remedial action plan (RAP) or lakewide area management plan (LAMP). The TMDL/RAP/LAMP would establish a total loading cap for all point and nonpoint sources in the receiving waters or area of concern where trading would occur. Point source wasteload allocations (WLA's) and loading allocations (LA) for nonpoint sources would establish the baselines for credit generation and use. Source would be required to be included in the cap to be eligible for trading. This would have the effect of requiring sources to obtain credits for new and increased used in the trading area.

Rule 5(3) provides that closed trading on a pollutant-specific basis could occur where water quality standards are being met and for which a watershed management plan has been established to maintain water quality standards, accommodate growth and regulate land use. Community-based watershed management plans would be reviewed and approved by the department to assure consistency with water quality regulations and to assure that water quality standards/designated uses are met. Once approved by the department, the watershed management plan would establish a cap. Allocations for the discharges of point and nonpoint

sources under the cap would be established by the agency, organization or local unit of government which develops the plan. Permits issued by the agency and the use of trading credits would be required to be consistent with the plan.

The workgroup discussed the need to distinguish between open and closed trading. The group also discussed whether to allow cross-pollutant trading, trading for non-conventional pollutants and cross-watershed trading. The general consensus of the group is to allow for cross-pollutant and non-conventional pollutant trading on a case-by-case basis. The group was split on whether to allow trading between different watersheds. Two specific examples were discussed. One involved using combined sewer overflow (CSO) reductions in one drainage area/system to offset the requirements to control CSO's in a different area/system. It was noted that cross-watershed trading was not consistent with EPA's policy/framework nor the department's trading program recommendations which have been adopted by the Governor's Steering Committee For Market-Based Environmental Programs. Questions were raised about the legality of using credits in lieu of eliminating CSO discharges of raw sewage. The implications these issues have regarding program approval by EPA and acceptance by environmental groups and the public were pointed-out.

The second example of cross-watershed trading involved reductions in one waterbody with marginal water quality being used in another watershed with better water quality. Re-routing a storm sewer from a water quality limited stream to a different stream with greater assimilative capacity was suggested. Everyone agreed that eliminating or controlling stormwater discharges to the water quality limited waterbody would be beneficial. Some members of the group felt this type of trading could result in a net environmental benefit and that such trading should be done on a case-by-case basis to assure that a violation of water quality standards/designated uses does not occur. The group acknowledged that new or increased uses can be addressed under existing regulations. Permits would most likely be required and the activity would trigger the antidegradation provisions of R 1098.

The group also discussed banking. Draft #4 is inconsistent because changes were not made to the credit life provisions in Rule 13. While the use of banked credits may not be appropriate for oxygen-demanding pollutants, it may be acceptable for nutrients. The provisions for banking and credit life for early reductions have been retained in Draft #5. This issue was scheduled as an agenda item for the next meeting.

Draft #5 Rules will be cleaned-up to remove previous bold/strikethrough changes and to include revisions, which to the extent possible, reflect the general level of consensus on the issues discussed so far.

The next meeting of the workgroup has been scheduled for 9:30 am on June 5, 1998. It will be held at the Michigan United