

November 19, 1998 Meeting Summary

A list of those who attended the meeting is attached. The October 14, 1998 meeting summary was approved (attached). The draft rules for urban stormwater (Jim Ridgway, October 12, 1998) were slightly revised and handed out at the meeting (attached). A copy of DRAFT #10 rules is attached. The group discussed discount factors and decided to drop the discount factor for distance and revise the approach for impoundments. The rules will be revised to incorporate a discount factor where an impoundment with a retention of 2 weeks is present between the generator and user of credits. The group revisited the issue of whether the local match of a publicly funded grant should be eligible to generate credits. It was decided that the local match or in-kind contribution should be eligible for grants administered by the USDA NRCS, but not environmental grants under Section 319 of the CWA. The rules will be revised to incorporate these changes. The basis for this change is the NRCS grants are not primarily for improving water quality. The Conservation Reserve, Wetland Reserve and EQUIP programs, while intending to result in an environmental benefit, are primarily aimed at achieving long term changes in agricultural practices which will improve productivity and sustainable agriculture. In contrast, the CWA 319 grants are solely to improve water quality. The general consensus of the group that public funds to improve water quality should not be eligible to generate private credits that would be put back into the water through trading. Suggestions were made to add the following terms to the definitions: person, point source (to include permitted municipal and industrial stormwater facilities). The group discussed how the baseline and credit generation would be determined under the draft urban stormwater rule language and decided that a couple of revisions for site-specific permitted industrial stormwater facilities are appropriate. Jim Ridgway agreed to draft language incorporating these recommendations. The group spent most of the meeting discussing EPA Comments (attached) and a process for developing a response. The process is aimed at asking EPA for clarification on certain points, explaining the in-house (division, department and steering committee) process and providing for input from the workgroup members and the Great Lakes Trading Network.

The consensus of the group is that EPA's role should be oversight, not prescription. It was suggested that EPA conducting monitoring to verify program effectiveness and water quality improvements could best do this. Individual members of the workgroup agreed to contact their constituents and affiliate and advise them of EPA's comments. The key policy and program issues included in EPA comments as they affect the statewide trading framework recommended by the department, steering committee and workgroup were discussed. EPA commented that credits could not be used to meet technology requirements for stormwater phase II (MEP) and management measures required by the Coastal Zone Act Reauthorization Amendments. The effect of not allowing municipalities to generate and use credits based on MEP will essentially kill trading for stormwater. The effect will be delays and lack of information needed to establish numerical limits for MEP. Municipalities will propose the least-cost minimum needed to comply with MEP. Trading would allow municipalities to optimize the cost of implementation and would provide cost/benefit information needed to better define MEP and water quality requirements. The effect of setting the NPS baseline based on CZARA will be to create an unlevel playing field for trading. This would actually split the state and individual watersheds so that coastal areas would have to do better than CZARA to generate credits and could not use credits to meet CZARA requirements (Figure attached). Setting CZARA as the baseline would have the effect of making a voluntary federal program mandatory for trading. The feeling of the group is that trading is an instrument to implement CZARA and make the management measures economically achievable. EPA has taken the position that trading can not occur in nonattainment waters until a TMDL has been developed. EPA's position seems to be inconsistent with a US Supreme Court decision (Arkansas v Oklahoma, 503 U.S. 91 (1992)), an NPDES permit issued 4 September 1998 in Massachusetts (Permit No. MA0039853) and the trading program that is being developed in Chesapeake Bay. Collectively, EPA's position on these key issues will significantly restrict the scope of trading, the ability to implement voluntary NPA reductions and the ability to use trading as an instrument to implement phased TMDLs or to make voluntary reductions to avoid having to

develop a TMDL. Comments from the workgroup members are welcome and will be incorporated in the department's final response to EPA.

The next meeting was scheduled for December 17, 1998. It will be held at the office of ECT in Northville. The meeting will begin at 9:30 am. A copy of the agenda and a map is enclosed.