

October 14, 1998 Meeting Summary

A list of members who attended the meeting is attached. The draft September 29, 1998 meeting summary was approved as final without change (attached). Two documents which were distributed at the meeting are also attached: "Water Trading - Urban Stormwater Protocol" (Rebecca Maure, October 9, 1998) and draft rules for urban stormwater (Jim Ridgway, October 12, 1998).

The group discussed discount factors to address equivalency for distance, season, and impoundments. Environmental concerns and technical considerations supported the use of discount factors to provide greater equivalency. There was consensus that discount factors should be kept simple and applied on the use end of the trade. This would provide assurances to generators that registered credits would retain their value. It will also increase the number of credits used and the environmental benefits achieved. The group also raised the need to specify the unit of time over which each discount factor will be applied when credits are used to meet a daily, monthly, or yearly effluent limitation. The group agreed to apply these discount factors in addition to the trading ratios specified for point and nonpoint sources.

Several approaches were considered for each discount factor. These included a flat percentage rate (ten percent), restrictions on the flow of credits (nonseasonal to seasonal and banked nutrient credits), and a rate per unit of time or distance (0.1 credit/river mile).

The group decided to use a percent credit per river mile to address distances between the generator and user of credits. Consideration was given to establishing a different factor for first, second, and third order streams. This option was not selected due to the lack of data for specific streams, variability of flow, relationships of particle size to flow, and precipitation events. It was recommended that a factor be established by looking at the Rahr malting case. The group acknowledged that this was not a scientific approach, but felt that an additional discount factor for distance in conjunction with the other provisions in the rules would provide a higher level of certainty that trading would provide a net water quality benefit.

The group decided to recommend a straight ten percent factor to provide greater equivalency for credits used to comply with a seasonal discharge limitation and where an impoundment is between the sources that generate and use credits. For those credits generated during the same season for which credits will be used to meet a seasonal limitation, there would be no discount. For those credits generated during a time different (nonseasonal) than the time period for which a discharge limitation has been specified by permit (seasonal), the user would be required to purchase an additional ten percent credits than those simply needed to meet the limit. Where a point source has a special seasonal discharge limitation of ten pounds per day, the source would need to purchase 11 pounds per day to be in compliance.

The group adopted the same approach to address situations where an impoundment is located between a source that generates credits and one that uses those credits. A flat ten percent factor was agreed upon where the retention time of the impoundment is greater than one year.

Dan Dell and Charlie Bauer suggested and agreed to contact Land and Water Management Division to see if there is a list of lakes, ponds, and impoundments that might be helpful to include in the rules.

The group summarized and confirmed the consensus reached earlier for the agricultural framework. The group then discussed the following outstanding issues: compliance and enforcement, eligibility of publicly funded projects to generate credits for private individuals, and a window with a sunset for substandard practices.

The group agreed upon a three-year window for farmers to be able to generate credits by reducing or eliminating discharges of manure runoff from feedlots and pastures into surface waters. This opportunity to generate credits would sunset after a period of three years from the effective date of the rules. After the sunset, a farmer must have a manure management plan in place before credits could be generated. The purpose of this provision is to address two very important considerations. First, the discharge of any substance that is or may become injurious to the waters of the state is prohibited. Second, there are no existing minimal requirements for manure management. Having the window/sunset provision is intended to provide incentives for improving performance, absent mandatory requirements. These provisions would not allow a person to generate credits by correcting a nuisance condition under the Right-to-Farm Act. Those situations where manure runoff has caused a nuisance that has not been corrected under the Right-to-Farm Act and has been referred to the Department for enforcement shall not be eligible to generate credits by correcting the violation. This approach is consistent with looking at impacts on the designated uses of the waters of the state rather than just looking at any discharge as being illegal.

The group decided that a person who receives funding to implement management practices aimed at improving water quality under a subsidy program should not be able to obtain credits unless that individual provides a match in funds greater than that required to obtain assistance. The group agreed that providing more than the required local match could generate credit. Where a 20 percent match in funds or in-kind services is required to obtain funding under a program such as the Environmental Quality Incentive Program, a farmer could generate credits by putting up 30 percent match. The credits that the farmer would generate would be the loading reductions derived from the ten percent excess match.

The group agreed on the need to establish a framework for agricultural accountability. A distinction was made between compliance determinations and enforcement activities. Division staff pointed out the difficulty of conducting an inspection to determine compliance with trading rules and seeing other violations. Most staff felt an obligation to document and take action to address any violations that are encountered. The group felt this could be addressed by having agricultural compliance initially determined by the nonregulatory agencies (NRCS, SWCD, and MDA). Representatives from these agencies have the expertise and would assist farmers who wanted to participate in trading.

The group agreed to the following approach. Certified planners or nonregulatory agencies would help the farmer develop a plan (document existing baseline practices and loadings, recommend management practices, and reductions which could be achieved), provide technical support, and conduct inspections to verify that the management practices are being properly implemented and maintained. The farmer would be required to do what had been specified in the plan and registered by the farmer to generate credits. Complete implementation and proper maintenance of those management practices registered in the plan would constitute full compliance for purposes of trading.

A person who did not fully implement and properly maintain the management practices that were registered would be referred to the Department for appropriate enforcement action. Cases referred to the Department would be treated like any other and the scope of enforcement would not necessarily be limited to compliance with the trading rules.

Charlie Bauer, Kevin Kirk, Thad Cleary, and Chuck Cabbage will meet and provide draft rule language that incorporates the agricultural compliance and enforcement framework agreed to at this meeting. The draft language will be provided by October 23, 1998 to be incorporated into the rules and discussed at the next meeting.

Draft #9 Rules incorporate revisions to include the workgroup recommendations for discount factors (Rule 10), window/sunset, and eligibility of subsidy-funded reductions (Rule 8).

The next meeting is scheduled for November 19, 1998. It will be held Michigan United Conservation Club office, 2101 North Wood Street, Lansing (agenda attached)