



May, 2003 Conference Call

Representatives from the following organizations participated in the conference call: Brown and Caldwell (John Ricketts, Nashville, Tennessee); Jones Day (Brent Fewell); Kieser & Associates (Mark Kieser and Andrew Fang); Massachusetts Department of Environmental Protection (Marcia Sherman); Michigan Department of Environmental Quality (Rick Hobrla); Resource Strategies Inc. (Joe Kramer); University of Maryland and King & Associates (Dennis King); and U.S. EPA-National Risk Management Research Laboratory (Hale Thurston).

Mark Kieser chaired the call.

Miscellaneous Items

Mark Kieser mentioned a report by EPRI (the Electric Power Research Institute) on water quality trading. Joe Kramer indicated that he was one of the report authors and will determine whether he can make the report's Executive Summary available for posting on the ETN web page. Joe and Mark will pursue this with EPRI.

The April call summary was finalized when no correction was suggested by the call participants.

Mark Kieser reminded the call participants of EPA's National Forum on Water Quality Trading. The registration is free for this 1.5 day event in Chicago on July 22 & 23. There will be a panel discussion on the second day of the program featuring four panel members from different backgrounds: David Merkel, Menasha Corporation; Tom Christensen, U.S. Department of Agriculture; Terry Young, Environmental Defense; David Mabe, Idaho Department of Environmental Quality. Mark will be the panel moderator. EPA Assistant Administrator Tracy Mehan will give the opening and closing remarks for the first day of the forum. Many top leaders from EPA and USDA will be in the forum to discuss the water quality trading policy. The forum website is at:

<http://www.epa.gov/owow/watershed/trading/conferences.html>

Wisconsin Trading Policy Development

Joe Kramer is writing a white paper providing suggestions for Wisconsin's future trading policy/rule. He is basing this article on trading pilots in Wisconsin, the Midwest, and other regions of the nation. He interviewed participants from these pilots on the barriers and drivers of implementing water quality trading. The article also draws from a literature review.

Six barriers were identified in the article and the most important one is that there appears to be too much uncertainty in pilot trading projects. Uncertainty is encountered when:

- C Buyers and sellers do not know what trading really is and what rules to follow;
- C Buyers are not sure if credits purchased in a trading program can be used to meet federal permit requirements;
- C Point sources (PS) do not know if they are liable for nonpoint source (NPS) default in fulfilling trading contracts;
- C Point sources are not sure about the durability of purchased credits and when the duration of trading programs is not the same as that of their permits;
- C There are publicity concerns; and
- C Buyers and sellers do not know how pre-TMDL credits will be treated after a TMDL is established.

The recommendations in the paper will deal primarily with these uncertainties. Other barriers identified include nonpoint source (NPS) reluctance in participating in trading, insufficient information, communication difficulties, and no regulatory and economic incentives for trading to take place.

Suggestions made in the article to overcome the uncertainties in trading will emphasize the importance of the state, in its future trading policy, clearly delineating issues related to these uncertainties. For example, the policy should make clear at the earliest point possible on how early pollution reduction credits will be treated when a TMDL or any other regulation is established on pollution reduction requirements. The state should also define who is liable in the event of NPS default in trading contracts and what should be done to correct the problem. Michigan's trading rule provides a good example of dealing with this issue. For the uncertainty due to trading participants unfamiliarity with trading, a detailed trading policy can also help guide trades.

There have been three trading pilots in Wisconsin: the Rock River, Red Cedar River, and Fox-Wolf River projects. Point sources in the Rock River were required to reduce their effluent phosphorus (P) level to 1 mg/L. It turned out that this was a lofty goal and very difficult to reach. In addition, point sources account for 40% of the total P load in the basin, making point-nonpoint source trading less effective in reducing the total load. There was confusion about NPS BMP efficiencies, pollutant delivery ratios, and setting a trading ratio, all of which impeded trading. The Wisconsin DNR (WDNR) has produced a document clarifying these confusions. Future trades can benefit from this document. This document has not yet been published.

Agricultural NPS were reluctant to get involved in trading pilots in Wisconsin because they did not want to be singled out as polluters, be told what to do, or be subject to regulations. They did not want to be singled out as polluters, told what to do, and subject to regulations. Farmers are generally busy dealing with many challenges and do not have the time for trading negotiations. The new Wisconsin NPS performance standards also pose a barrier to trading because EPA's trading policy states that a source must meet all applicable existing requirements and standards before it can produce tradable credits. A major recommendation to overcome NPS reluctance is to form an farmers' association and establish a representative for the association dealing with trading. The representative may be from the local land conservation district. Such an association can improve efficiency in trading because it has the economies of scale, proximity, and timing. In addition, point sources (PS) may be better able to negotiate trading compared with individual farmers. It can also avoid singling out a particular farmer in trading. The association representative makes available an accountable person for PS's to deal with when trading with agricultural NPS's. Remaining questions in engaging NPS's in trading include the initial funding for establishing such associations and the EPA's requirement for complying with existing requirements.

Mark Kieser mentioned a study being conducted by Alan Randall at the Ohio State University on farmers collectively meeting environmental requirements. There is some similarity between this concept and the idea of forming associations in trading.

The following are questions and answers during the ensuing discussion on establishing trading policy in Wisconsin.

Q: Is the farmer association similar to the PS association established in the Tar-Pamlico trading program?

A: Yes. The association will be responsible for group compliance and trading can first take place among association members.

Q: What are the incentives for farmers to join the association?

A: A threat of future regulations are likely necessary to make BMPs and management plans mandatory. They will provide the incentives.

Q: How can we get hold of WDNR's document on BMP efficiency and trading ratio calculations?

A: Mary Anne Lowndes at WDNR , lowndm@dnr.state.wi.us, 608-261-6420, can be contacted for further information.

Q: What is the current status and projection for Wisconsin's trading policy?

A: Due to the budget crisis, trading is not likely to be discussed on the state level anytime soon. Joe suspected that no trading policy or rule will be realized in Wisconsin for at least another couple of years. In addition, few if any TMDLs have been established in Wisconsin, providing few incentives for trading.

Q: Were PS's in Wisconsin willing to join trading pilots?

A: In the Fox-Wolf River, PS's were preoccupied with superfund clean-ups and did not pay much attention to nutrient trading. In the Red Cedar River, trades between the City of Cumberland and surrounding farm communities did take place. The city supplied funds, distributed by the county land conservation district, to farmers who applied for them to reduce loading from their land. The city used these credits to offset its treatment plant's loading. There is a publication available on this project and Joe will make it available to be posted on the ETN website.

Joe's article will eventually be posted on the ETN website. He will present it in a watershed summit in Wisconsin next February. He hopes to finalize the draft by mid-June.

Dennis King's article, "Will Nutrient Credit Trading Ever Work?" published in ELR (Environmental Law Reporter)

A brief discussion ensued between call participants and Dennis King on his recent article. Dennis will send this article to Mark for posting on the ETN website.

Dennis perceived that unlike other environmental trading programs (e.g., the acid rain) the biggest problem of early nutrient trading is that regulators want it, but buyers and sellers are hard to come by. This inspired him to conduct a study on the institutional obstacles in nutrient trading. He found that due to the credit eligibility requirement of complying with existing standards first, credit suppliers often find themselves operating so far along the cost curve that trading is just not profitable. Also, in order to sell credits, NPS (farmers particularly) have to admit they are polluting, get the pollution measured, and then find a way to control it. These steps subject them to potential future regulations, an untenable situation in many instances. In terms of demand, Dennis suggested that PS's do not want to buy from unregulated NPS's. In addition, many Farm Bill conservation programs in effect compete with trading for credit suppliers.

Denis indicated that some of the earliest participants in wetland mitigation banking trading took (environmental and financial) risks to make it happen. However, after 4-5 years, their track record suggested many deficiencies, and environmental groups began to question the program. Dennis hopes nutrient trading will not encounter the same problem.

Dennis suggests that nutrient trading may best be successfully conducted by an independent private organization such as the stock exchange (e.g., Environmental Credit Exchange), which has the resources that the government does not to establish, verify and insure markets for environmental credits.

Next Call

The next call will be at 10:30 EDT, Wednesday, June 25, 2003.