

## *Great Lakes Trading Network*

### *Summary of the January 10, 2001 Conference Call*

Twelve people representing the Minnesota Pollution Control Agency, Allegheny Energy, Fox Wolf Basin 2000, Kieser & Associates, San Francisco Tradable Loads Program, Texas Natural Resources Conservation Commission, World Resources Institute, EPA's Region 5, Region 10 and Chesapeake Bay Program Office participated on this call. Two items were discussed.

#### **GLTN Communications**

The GLTN website was recently added to the Great Lakes Information Network (GLIN) and the Ecological Society of America list servers. We have had over 200 hits in the last week to ten days from as far away as New Zealand, Italy, Spain, Australia, UK and many locations across the US. The domains include a number of consultants, regulatory agencies and citizens. As Mike Crimmins said "we are out there". These hits on our website have generated requests for information and several individuals and organizations have asked to be added to the GLTN email and mail distribution lists. This raises some questions that the GLTN may have to address in the near future. Who should be added to the GLTN email and distribution lists? Who should be given information created by or exchanged on the GLTN?

The general feeling of the group was that people who request information, want to be added to our distribution lists and participate in conference calls should be accommodated as easily as possible. This could involve slightly more formal procedures and focused conference calls. The possibility that some persons would attempt to disrupt or "debate" trading during the conference calls was brought up. The group thought that we could deal with these circumstances if necessary. The resources that could be involved in responding to information requests, updating communication lists and increasing the number of participants on the calls was also considered. The consensus of the group is to accommodate requests for information and participation and see how things go. If issues come up we will address them.

#### **Status of Michigan's Program and Key Regulatory Issues**

The public comment period has closed, the department has prepared a Public Hearing Report and a decision has been made to finalize the rules as soon as possible. The director and staff meet with EPA Region 5 Administrator Lyons last week to present an overview of trading rule changes in response to EPA comments. An effort will be made in the next couple of weeks to resolve outstanding regulatory issues with EPA. Final rule promulgation should be complete in about 4 months. The department is committed to working with EPA to address outstanding issues but will finalize the rules with or without EPA approval.

There are four key issues that Michigan is trying to resolve with EPA. These issues affect voluntary trading programs in impaired waters, trading under established total maximum daily loads (TMDLs), NPDES permit requirements and requirements for non-point source trading. They are as follows:

1. Can trading occur in impaired watersheds for which a TMDL has not been developed? Michigan's program would allow pre-TMDL nutrient trading to occur such that there would be a net loading reduction and water quality benefit from each trade. EPA has indicated that trading can not be allowed to increase a point source discharge before a TMDL has been established.
2. How can trading occur once a TMDL has been established, does each trade between a point source and NPS require a formal modification of the TMDL? EPA commented that it may be possible to trade among PS and among NPS depending on the allocations and provisions in the TMDL plan; however, PS/NPS trading would constitute a change in the TMDL that would require a formal modification.
3. Are formal point source NPDES permit modifications required for each trade? EPA's position is that the use of credits to increase a point source discharge must be done through NPDES permits, in effect requiring a permit modification for each trade. Several trading programs have been working on ways to allow trading to occur consistent with federal NPDES permitting requirements, but without a formal permit modification being required before each trade can occur. Michigan is proposing a rule revision that would establish a limit on point source credit use up to a certain level. Credit uses over this threshold would require individual permit modifications. Credit use below this threshold would be incorporated into NPDES permit conditions and could occur under the rules after the permit is issued. The permits will contain water quality based effluent limits (WQBELs) that are derived from state water quality standards (WQS). For phosphorus the WQS and WQBEL is set at 1.0 mg/l, unless a more restrictive limit is necessary to ensure that localized problems do not occur. The permit will contain two sets of discharge limits: one that will apply if trading does not occur, one that will apply if trading does occur. The permit conditions that would apply if trading occurs will establish a limit on credit use up to the threshold established in the rules. Once issued the source would have the option of trading to comply with its nutrient limit, up to the threshold limit on credit usage. This approach will allow permit reviewers and the public to see how water quality limits are set and to consider the potential use of credits up to the threshold limit set by rule and specified in the permit. Once issued, trading would occur under the rules. The source would be required to submit a notice of credit use that the department would review to ensure all trading rule requirements are met and that a specific use of credits would be consistent with WQS. The rules establish authority for the department to conduct technical reviews and require information needed to ensure that credit use does not cause a violation of WQS. The rules do not allow point sources to trade (use credits) to comply with technology-based requirements and prohibit the department from approving trades that are not consistent with WQS.

The department hopes this approach is acceptable to EPA and that it could be transferred to other programs.

4. Should NPS be required to fully implement Coastal Zone Act Reauthorization Amendments (CZARA) management measures? EPA commented that CZARA NPS management measures are technology-based requirements that must be met before NPS can trade. In other words, NPS must fully implement these management measures before they can generate credits, and that NPS can not use credits to achieve the level of

reductions required by CZARA. This issue affects all states and programs that have coastal areas.

Michigan does not agree that CZARA should apply to trading. NPS are not regulated under the CWA. CZARA management measures are guidelines, not regulations. CZARA requirements apply to state programs funded under CZARA and projects funded under Section 319 of the CWA. Michigan's trading program is not federally funded and does not allow NPS to generate credit by reductions that are publicly funded. This issue has huge implications for other trading programs in the Great Lakes, Chesapeake Bay and all other coastal areas of the nation.

*Another implication of this issue is that CZARA NPS management measures must be fully implemented as a minimum requirement for all TMDLs that address NPS, regardless of cost and water quality benefit. Federal technology requirements are also subject to anti-backsliding!*

### **Nutrient Net Trading Day**

Patricia Zurita (WRI) reminded folks of the upcoming Trading Day on January 18. A number of people on the GLTN will be participating and there is room for a couple of more to play. If you are interested, contact Patricia at 202 729 7673.

### **Next Conference Call**

The next call will be held at 11:00 am EST on February 13th. A suggestion was made for the agenda to include a discussion on the topic of "Can trading ratios be credited towards NPS reductions required under a TMDL?" Please contact David Batchelor (517 373 2677) if you have other agenda items you would like added.

