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RE: Draft Trading Framework Paper - For Review and Comment

Thank-you for the opportunity to comment on the *Draft Water Quality Trading Framework* dated September 20, 2010 (Publication Number 10-10-064).

Northwest Pulp and Paper Association appreciates the time and effort that has been devoted to this issue and the objective to have a framework to deal with trading in the Spokane and in other areas of the state that that are struggling to how to implement waste load allocations in a TMDL. NWPPA has two comments.

1. NWPPA Supports the Draft Water Quality Trading Framework

NWPPA supports the idea that the guidance document is a summary of the steps needed and the role Ecology will play but that the document primarily relies on existing EPA guidance.

EPA Guidance does not allow trading to address toxics. This means that trading will be limited to address conventional pollutants such temperature and nutrients that cause depressed levels of dissolved oxygen. As the Spokane Dissolved Oxygen TMDL (March 2010) nears implementation, trading will be a helpful option.

While this is a good start, NWPPA is concerned that Ecology will need a larger more comprehensive strategy to provide additional mechanisms to address issues of impaired waters in the future.

2. Ecology Needs a More Comprehensive Strategy to Address Impaired Waters

Ecology needs to commence long-term planning to address the fact that the state will have more water bodies listed as impaired waters in the future, even where

actual water quality remains the same or shows improvement. Additional listings of impaired waters will of course occur if water quality degrades below water quality standards. However, additional listings will also be driven by two factors: (1) Ecology will ultimately have more stringent water quality standards that incorporate higher fish consumption rates of native Americans; and (2) Analytical detection methods will continue to improve and many substances, toxic and conventional, will be measurable that are not measurable today.

With three decades of controls of point sources, most of the “new” water quality listings due to the two factors cited above will involve substances that are ubiquitous in the environment. These substances may either be naturally occurring or human-caused. Arsenic is an example of naturally occurring earth metal that is ubiquitous in Pacific Northwest surface and groundwater and is present in many locations at levels that exceed water quality standards. With new more stringent water quality standards likely to be adopted in the near future, most Washington waters will be many times over the arsenic criteria. A similar situation will exist for other naturally occurring earth metals. PCBs are an example of a man-made substance that has become ubiquitous in Pacific Northwest waters at very low levels but at levels below the detection limits of the most commonly used EPA approved methods. PCBs will become detectable virtually everywhere using the new methods EPA is in the process of approving. Mercury is an example of a substance that will likely exceed water quality standards in the future and is both a naturally occurring earth metal and is also present due to long-range air deposition from combustion sources such as coal-fired power production in China.

The point of these examples is that although the trading guidance is a good first step, Ecology needs a long-term strategic plan to deal with very different water quality issues of the future. Addressing the water quality issues of the future such as those cited above will be difficult given that feasible technology may not exist to remove extremely low levels of trace contaminants. TMDLs with a primary focus on point sources will yield diminishing returns.

Ecology should commence a comprehensive long-term strategic process to review and develop existing mechanisms under the federal and state clean water acts to address these issues. For example, Ecology should include the following mechanisms in a comprehensive long-term strategic plan:

1. Ecology should commence rulemaking to implement flexible implementation mechanisms allowed under the federal clean water act, for example:
 - Use state discretion to reduce regulatory risk levels (now 10–6) where naturally occurring earth metals exceed this level.

- Articulate guidance *and commit to expeditious processing* of any Use Attainability Analysis or site-specific water quality standards revision petitions/applications that might be received. For example, EPA recently adopted new rules for the state of Florida that allow flexible site-specific standards. EPA announced in November 2010:

“EPA is also announcing a flexible approach for deriving federal site-specific alternative criteria (SSAC) based upon stakeholder submission of scientifically defensible recalculations of protective levels that meet the requirements of CWA section 303(c). This allows for case-by-case adjustments depending on local environmental factors while protecting water quality. Governments or other stakeholders can seek site-specific consideration in cases where water bodies have been extensively assessed by the State and local communities and effective measures are in place to reduce nutrient pollution. Existing or new Total Maximum Daily Load (TMDL) targets that differ from EPA’s final criteria can be submitted to EPA by Florida for consideration as new or revised WQS and will be reviewed under this SSAC process.”

http://water.epa.gov/lawsregs/rulesregs/florida_index.cfm

2. Ecology should commence rulemaking to implement mechanisms currently authorized by the state legislature, for example:

- RCW 90.48.605 provides: The department shall amend the state water quality standards to authorize compliance schedules in excess of ten years for discharge permits issued under this chapter that implement allocations contained in a total maximum daily load under certain circumstances. Any such amendment must be submitted to the United States environmental protection agency under the clean water act. Compliance schedules for the permits may exceed ten years if the department determines that: (1) The permittee is meeting its requirements under the total maximum daily load as soon as possible; (2) The actions proposed in the compliance schedule are sufficient to achieve water quality standards as soon as possible; (3) A compliance schedule is appropriate; and (4) The permittee is not able to meet its waste load allocation solely by controlling and treating its own effluent.
- RCW 90.48.422(2) provides: “When a water quality standard cannot be reasonably met through the issuance of permits or regulatory orders issued under the authority of this chapter, the department may use voluntary, incentive-based methods including funding of water conservation projects, lease and purchase of water rights, development of new storage projects, or habitat restoration projects in an attempt to meet water quality standards.”

Thank-you for the opportunity to make comments on the proposed trading framework paper. We view this document as a good first step to what should be a larger comprehensive strategic plan to address the water quality issues of the future. We look forward to discussing this with you further.

Sincerely,

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