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Secretary of Transportation

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November 19, 2010

Helen Bresler  
Department of Ecology  
Water Quality Program  
PO Box 47600  
Olympia WA 98504-7600

RE: WSDOT Review Comments for Washington Water Quality Trading/Offset  
Framework Draft

Dear Ms. Bresler:

The Washington State Department of Transportation (WSDOT) Environmental Services Office reviewed the Draft Water Quality Trading Framework (Washington State Department of Ecology Publication Number 10-10-064). We appreciate the opportunity to provide comments on this document. In general:

WSDOT is supportive of a water quality trading program in Washington. In the future, we may want to participate in the trading program under our NPDES Municipal Permit's TMDL implementation requirements. However, we are concerned with relying on Waste Load Allocations (WLAs) as an indicator of compliance and a baseline for the trading program, as it applies to TMDLs. In our experience, many TMDLs are developed lacking stormwater data. In the absence of data, various methods and models are used to predict stormwater contributions. Many times, the models used are based on generic impervious cover estimates and pollutant concentration values that may not be representative of Washington highways. WLAs are assigned to WSDOT based on these generic methods and models. We are concerned that these potentially erroneous values (WLAs) will be the baseline of the proposed water quality trading program, as it applies to TMDLs.

We understand this document was written in general terms to provide a framework for trading that may be implemented under many different permits or programs. However, to provide more clarity, we suggest adding sections to the document that would provide specific guidance to the different audiences on how trading would/could apply to them. Suggested audiences include: NPDES Municipal Stormwater permittees, NPDES Industrial permittees, non-point sources who are not permitted under NPDES, and NPDES General Construction permittees (if trading applies to that permit as well). As it is, this document is unclear exactly who trading will apply to and how it will help/affect permit compliance and their overall programs.

We also suggest adding a glossary to define some of the terms used in the document that can be confusing or seem to be used interchangeably. Some examples are: effluent limitation, water quality standard, WLA, load allocation, offset, best effluent technology, credit earner, credit buyer, discharger, proponent, and participant.

We would like to provide the following specific comments, which include the page number and wording in question/of concern:

Page 3, "How trading works:"

***Comment***

This section implies the trading program applies only to TMDLs. Suggest breaking down "how trading works" for each group that trading may apply (i.e. industrial permittees, TMDL stakeholders, etc.).

For TMDLs where credit trading is allowed, please clarify whether stakeholders can choose to opt-out of the credit trading program. Suggest adding some text to clarify if the trading program will be completely voluntary.

Page 3, "How Trading Works," 4<sup>th</sup> bullet: "Point sources can meet their wasteload allocation (WLA) by:

1. Meeting the permit limit based on the WLA through on-site actions, (for example, by reducing the quantity or improving the quality of discharge).
2. Earning "credits" by implementing pre-approved nonpoint source pollution control measures, or
3. Buying "credits" from other sources that have reduced pollutants below their own allocation."

***Comment***

Suggest adding clarification and/or include examples, of what "pre-approved nonpoint source control measures" may consist of. Please clarify if NPDES Municipal permittees could earn credits for implementing pollution prevention measures contained in NPDES Municipal Permits (e.g. Illicit Discharge Detection and Elimination, maintenance activities, etc.). Please clarify if credits could be earned for construction of stormwater stand-alone retrofits and BMP installation during new construction if in a TMDL area.

Page 3, "What is a credit?" 1<sup>st</sup> bullet: "A unit of pollutant reduction usually measure in pollutant quantity (pounds) per unit of time at a point of compliance."

***Comment***

Please clarify what pollutants will/may be eligible for the trading program.

Page 3, “What is a credit?,” 3<sup>rd</sup> bullet: “Generated by a nonpoint source from the installation of best management practices beyond those required to meet the most stringent load allocation applicable to that nonpoint source.”

***Comment***

Ecology doesn't have approved BMPs for some pollutants, such as fecal coliform. Please describe how trading will be implemented for these types of pollutants.

Page 3, “EPA Guidance,” last bullet: “Surplus credits are created only when discharge is reduced **below** water quality-based limits or applicable technology-based limits, whichever is more stringent.

***Comment***

Please clarify the difference between “earned credits” and “surplus credits.” If they are the same, suggest using the same terminology for clarity.

Page 4, “Identifying eligible BMPs for nonpoint trades:”

***Comment***

Please clarify whether the eligible BMPs will only be allowed for use by nonpoint sources, as stated in the title, or if point source dischargers will be able to use the eligible BMPs too. If point sources will be able to use the BMPs as well, suggest removing “nonpoint” from the section heading.

Page 5, “Quantifying/estimating pollutant reductions,” 2<sup>nd</sup> sentence: “Monitoring must measure actual reductions periodically and adjust, if necessary, the estimated reductions.”

***Comment***

As written, it is unclear who will perform this monitoring and for how long. Suggest specifying who will be monitoring to measure actual reductions (i.e. Ecology, the stakeholder trying to earn credits, or the credit buyer).

Page 5 and 6, “Proposing an alternative trade:”

***Comment***

We assume this section pertains to a discharger proposing to use a new BMP/technology that is not included in Ecology's Stormwater Management Manual (SWMM), or an equivalent manual, similar to the demonstrative approach. We assume this section would not apply to get a BMP/technology added to the list of “eligible BMPs for trades” if it is already included in Ecology's SWMM. The steps involved in proposing an alternative trade seem very onerous to simply get an Ecology-approved BMP added to the list of “eligible BMPs for trades.” As written, it is not clear when this would apply.

Page 7, "Implementation requirements," 1<sup>st</sup> bullet: "Implementation of the offset/credit for any proposed new or expanded actions must be demonstrated to have occurred in advance of the proposed action."

***Comment***

Please clarify whether this section is describing the implementation of an alternative trade, or any trade. Please explain what is meant by "any proposed new or expanded actions (i.e. is this referring to new or expanded BMPs, new or expanded TMDL actions, etc.)."

Page 7, "Implementation requirements," 2<sup>nd</sup> bullet: "Point or nonpoint pollution controls must be secured using binding legal instruments between any involved parties for the life of the project that is being offset. The proponent remains solely responsible for ensuring the success of offsetting activities for both compliance and enforcement purposes."

***Comment***

1. Suggest replacing the term "instrument" with "document," and/or provide examples of what kind of legal instrument would be acceptable.
2. Please clarify whether the "proponent" is the credit earner or the credit buyer. Page 5 and 6 refer to the "proponent" as a discharger proposing a trade, or credit earner. Based on that, use of the term in this instance should mean the credit earner as well. However, it is unclear. Suggest using easily understandable, consistent terminology, such as credit earner and/or credit buyer throughout the document to avoid confusion. Since either a credit earner or buyer could also be a "discharger," suggest adding these terms and definitions to the glossary.
3. EPA's Final Water Quality Trading Policy states, "In the event of default by another source generating credits, an NPDES permittee using those credits is responsible for complying with the effluent limitations that would apply if the trade had not occurred."<sup>1</sup> The information included in this bullet seems to contradict EPA's guidance.

Page 7, "Ecology issues NPDES permit:"

***Comment***

Suggest specifying which type(s) of NPDES permit is being addressed. It is unclear whether this section refers to NPDES industrial permits, general construction stormwater permits, municipal stormwater permits, or all NPDES permits. Included as a general comment above, suggest breaking down this section for each group that trading may apply (i.e. industrial permittees, TMDL stakeholders, etc.).

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<sup>1</sup> EPA. 2003. *Final Water Quality Trading Policy*. United States Environmental Protection Agency, Office of Water. January 2003.

Page 7, "Ecology issues NPDES permit," 1<sup>st</sup> paragraph, 2<sup>nd</sup> sentence: "By issuing the permit, Ecology presumes that the total of the permit holder's own discharge and any credits claimed to meet the TMDL wasteload allocation are in compliance with state water quality standards, provided that the permit holder adheres to all conditions of the permit and any other trading requirements."

***Comment***

It is our understanding that meeting a WLA is not the same as, or presumed the same as, meeting water quality standards. Our understanding is that if all point sources within a TMDL meet their WLAs, and all nonpoint sources within a TMDL meet their LAs, then water quality standards are presumed to be met in the water body for which the TMDL is established. Our understanding seems to contradict the cited statement.

Page 7, "Ecology issues NPDES permit," 1<sup>st</sup> paragraph, 3<sup>rd</sup> sentence: "This presumption may be overcome by evidence that the practices providing credit are found to be not effective or not adequately implemented or maintained."

***Comment***

Please explain how this will be handled as it relates to permit compliance. If a NPDES Municipal Stormwater permittee purchases credits to meet a TMDL WLA and associated compliance timelines, permit compliance could/would be jeopardized and there may not be resources available to regain compliance within the designated compliance timelines. Suggest expanding on this section to describe potential impacts to the different permittee groups and stakeholders that this might affect.

Page 7, "Permittee implements offset," 1<sup>st</sup> bullet: "To ensure credits are accrued and used in the same time period, the discharger must certify each month that offset activities/technologies are in place, being operated and maintained correctly, and that pollutant reduction associated with the action is being achieved."

***Comment***

Please clarify if the "discharger" is the credit earner or credit buyer.

1. Please clarify if this sentence is duplicative of the information in "Implementation requirements," 2<sup>nd</sup> bullet, 2<sup>nd</sup> sentence. It is unclear if these two sentences are referring to the same implementation activities (i.e. "ensuring...compliance and enforcement", and "certify each month...") and/or implementers (i.e. the "proponent" and the "discharger").
2. Please clarify how someone could certify that "pollutant reduction associated with the action is being achieved," without performing monitoring. Suggest revising this portion of the sentence to state, "...offset activities/technologies

are in place, being operated and maintained correctly, and functioning as intended,” unless monitoring is required.

Page 8, “Monitoring,” 1<sup>st</sup> bullet: “For point source discharges undergoing technology-based measures, Ecology may verify (pre and post-implementation) the magnitude and quality of discharge at end-of-pipe.”

***Comment***

Please clarify what is meant by “technology-based measures,” and/or provide examples.

Page 8, “Monitoring,” 2<sup>nd</sup> bullet: “Participant conducts monitoring as established either through the offset study report or alternatively, through a post-TMDL monitoring plan. Monitoring results and any additional reporting required by Ecology to document the offset are produced and submitted to Ecology monthly.

***Comment***

1. Please explain who is considered the “participant.” It is unclear if the term is referring to the credit earner or credit buyer. Suggest using consistent terminology throughout the document for clarity.
2. If the credit buyer will be required to perform monitoring, it may be a disincentive to participate in the trading program.
3. If the credit earner will be required to perform monitoring, please clarify if that only applies if they are “proposing an alternative trade.” If monitoring will apply to all credit earners, whether proposing an alternative trade or not, it may be a disincentive to participate in the trading program.

Page 8, “Credit expiration/retirement”

***Comment***

Please clarify whether the credit expiration/retirement date will be known when the credit is traded. If so, suggest including that information in this section of the document. If not, permit compliance could/would be jeopardized by an unexpected expiration or retirement of credits and resources may not be available to regain compliance within the designated compliance timelines. If expiration/retirement date will not be known when credits are traded, suggest expanding on this section to describe potential impacts to the different permittee groups and stakeholders that this might affect.

This document was written to address water quality trading as it may apply to various audiences. As written, it is not clear how trading would/could apply to each audience and who is responsible for different elements of credit trading (monitoring, operation and

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maintenance of BMPs, etc.). We would like the opportunity to review and comment on this document again after our comments and questions have been addressed.

Thank you for considering our comments. If you have questions or wish to discuss, please contact me or WSDOT's TMDL Lead, Jana Ratcliff, at 360-570-6649 (office), 360-701-6353 (cell), or [ratclij@wsdot.wa.gov](mailto:ratclij@wsdot.wa.gov).

Sincerely,



Kenneth M. Stone  
Resource Programs Branch Manager

KMS:jr

