

**First Amendment
to Pilot Trading Plan 1.0**

for the

Ohio River Basin Interstate Water Quality Trading Project

The undersigned parties (the “Signatories”) hereby adopt and approve this FIRST AMENDMENT TO THE TRADING PLAN (the “First Amendment”) as of the 10th day of October, 2013.

Background

- A. On August 9th, 2012, the Signatories signed and approved the Pilot Trading Plan 1.0 for the Ohio River Basin Interstate Water Quality Trading Project (the “Plan”), which sets forth mutually agreed-upon terms for implementing a collaborative effort to improve water quality in the Ohio River Basin (“ORB”) through the development of an interstate trading program (the “Project”).
- B. Among the key Project goals identified in the Plan is the promotion of early and voluntary participation by point source buyers, even in advance of compliance drivers such as numeric nutrient criteria, total maximum daily loads (“TMDLs”) and/or water quality-based effluent limitations in National Pollutant Discharge Elimination System (“NPDES”) permits.
- C. Section 17 of the Plan promotes an adaptive management approach to Project implementation and, accordingly, authorizes amendments to the Plan where necessary to achieve optimum effectiveness, efficiency and environmental improvement.
- D. The amendments set forth below further the goal of promoting early and voluntary participation in the Project by credit buyers.

Amendments

The Plan is hereby amended as follows:

1. Before compliance drivers are in place or widely applicable to buyers, the credits that are transacted hereunder will be deemed to be “Stewardship Credits” that improve water quality in the ORB by reducing nutrient loading and providing additional ecological and social benefits.

2. As inducements for early and voluntary participation by point source buyers, the Signatories authorize and support the incentives for purchasing credits during the Pilot, as set forth in Section 9 of the Plan, whether those credits are for compliance or simply for stewardship; provided, however, that in order for a point source buyer to enjoy any or all of these incentives, the buyer must be meaningfully involved in the Pilot. For these purposes, the Signatories believe that “meaningful involvement” means purchasing a minimum of \$10,000 worth of nutrient credits.

As an example of the incentive for future NPDES compliance flexibility, consider the situation where a point source elects to voluntarily purchase stewardship credits in advance of a compliance driver, in recognition of the individual and collective value of reducing nutrient loading in the ORB and providing additional ecological and social benefits. By their nature, those stewardship credits will be immediately retired after purchase, and thus will not be available to the point source buyer for compliance purposes in the future. However, in recognition of the value of early and voluntary participation by the buyer, the Signatories agree that if the buyer needs permit flexibility (e.g., an extended compliance schedule) to achieve a future nutrient compliance obligation, the Signatories will provide such flexibility, to the extent allowed by law.

3. The Signatories also support and may encourage the use of stewardship credits as supplemental environmental projects or for other appropriate mitigation purposes in environmental enforcement proceedings. In such cases, defendants may elect to purchase a certain number of stewardship credits to offset the amount paid as a penalty, subject to approval by the relevant State(s), or in the case of federal enforcement, U.S. EPA. To encourage such decisions, the Signatories are willing to prioritize the use of stewardship credits due to their high conservation, protection and restoration value in appropriate enforcement proceedings (e.g., where there is a geographic nexus to the ORB and a correlation between the violation and benefit).

4. As agreed, the Pilot is utilizing the EPA Region 5 spreadsheet for estimating Point of Generation Credits. In accordance with advancing the greatest possible science and integrity, the Pilot now clarifies that these estimates, rather than using generic default values, must take into account farm specific variables such as soil types, slopes, cropping history, prior tillage practices, and number and type of livestock to calculate reliable and consistent load reduction estimates for each project.

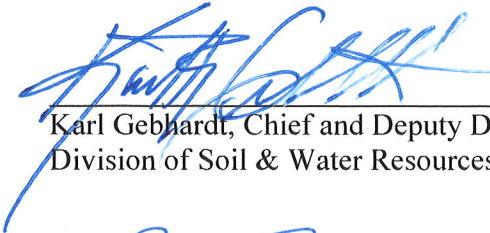
5. The signatories approve the use of the Ohio Department of Natural Resource’s Load Reduction Spreadsheet V2.2 (<http://www.dnr.state.oh.us/tabid/24157/Default.aspx>) for calculating nutrient reductions associated with improved milk house waste handling and controls. This calculator is recognized by Ohio Water Quality Trading Policy. This additional spreadsheet is needed since the EPA Region 5 spreadsheet model, the approved credit estimation tool during the Pilot, does not estimate nutrient reductions for milk house management practices.

6. The technical guidance contacts listed in Appendix E may change from time to time over the course of the Pilot period. Up-to-date contact information will be maintained in the Project files.
7. Except as amended above, the Signatories hereby ratify the Plan in all other respects.

Signatories

By their signatures below, the States of Ohio, Indiana, and Kentucky hereby (a) acknowledge the support this Project has received from EPA and USDA, (b) authorize and endorse this Plan, as amended, for the Pilot, and (c) agree to work collaboratively toward its implementation.

Ohio




Karl Gebhardt, Chief and Deputy Director
Division of Soil & Water Resources, Ohio Department of Natural Resources
10/28/13
Date

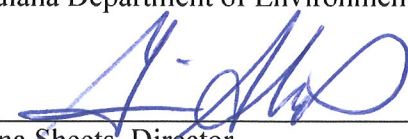


Scott J. Nally, Director, Ohio Environmental Protection Agency
10/20/13
Date

Indiana

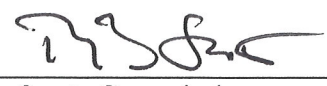


Thomas W. Easterly, Commissioner,
Indiana Department of Environmental Management
OCTOBER 10, 2013
Date

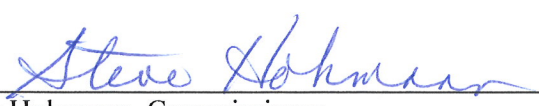


Gina Sheets, Director,
Indiana State Department of Agriculture
10/31/13
Date

Kentucky



R. Bruce Scott, Commissioner,
Kentucky Department of Environmental Protection
10/10/13
Date



Steve Hohmann, Commissioner,
Kentucky Department of Natural Resources
10/28/13
Date