

**THE LOWER BOISE RIVER EFFLUENT TRADING DEMONSTRATION PROJECT  
MEMORANDUM OF UNDERSTANDING**

between the U.S. Environmental Protection Agency,  
the Department of Environmental Quality,  
and the Soil Conservation Commission  
in the State of Idaho

April 27, 2001

**OBJECTIVE**

The objective of this Memorandum of Understanding (MOU) is to define the roles of the agencies that will verify the credits purchased and used by the National Pollution Discharge Elimination System (NPDES) permitted sources choosing to participate in effluent trading in the Lower Boise River Watershed. Participation by the permitted sources in effluent trading is allowed under a set of conditions described in the demonstration project's design framework document and that will be included in the sources' NPDES permit. This agreement recognizes the primary responsibilities of the U.S. Environmental Protection Agency (EPA) in administering and enforcing the NPDES program, the Idaho Department of Environmental Quality (DEQ) for administering water quality standards and assisting in the enforcement of those standards, and the Idaho Soil Conservation Commission (SCC) in establishing voluntary partnerships with nonpoint sources to address environmental concerns and providing assistance to EPA and DEQ concerning nonpoint sources' participation in the effluent trading program for the Lower Boise River watershed. This MOU sets forth a working arrangement between the three agencies to provide EPA and DEQ the information needed to verify the performance of the NPDES permitted sources in validating the underlying phosphorous reductions of the credits they purchase.

**BACKGROUND**

This agreement has been developed because of the willingness by the U.S. Environmental Protection Agency, the Department of Environmental Quality, and the Soil Conservation Commission to formalize the cooperative partnership in supporting a voluntary, market-based approach to implement the Lower Boise River Total Maximum Daily Load (hereafter referred to as "the TMDL") for phosphorous. The goal of the Agencies is to support the implementation of the TMDL in an environmentally beneficial and cost-effective manner that will achieve significant water quality improvement in the affected watersheds. In addition, stakeholders in the Lower Boise River Watershed participated in a two and one-half year long workgroup process, culminating in a set of recommendations for the effluent trading framework, one of a number of strategies for the Lower Boise River phosphorous TMDL. The project's design framework is outlined in the document entitled *The Lower Boise River Watershed Effluent Trading Demonstration Project: Summary of Participant Recommendations for a Trading Framework*,

which was completed by the Department of Environmental Quality's contractor Ross & Associates in September 2000<sup>1</sup>. It will also be described in its entirety in the state effluent trading requirements document, which is currently being developed by DEQ.

## **AGREEMENT**

Whereas the EPA has primary responsibility for administering the NPDES permitting program sources and may take enforcement action as needed to ensure compliance with water quality standards, and;

Whereas DEQ has primary responsibility for administering water quality standards, conducts inspections of permitted sources on EPA's behalf, investigates complaints about permitted sources' compliance with water quality standards, and, as authorized by state regulations, takes enforcement action against non-permitted sources for violations of water quality standards, and;

Whereas the SCC has primary responsibility for establishing voluntary partnerships with nonpoint sources using cost share programs to address environmental concerns and routinely reviews nonpoint sources' installation of Best Management Practices (BMPs) for those cost-share programs' purposes, and;

Whereas under the stakeholders' recommended framework for the Lower Boise River effluent trading project, nonpoint sources voluntarily participating in the project will be required to implement a conservation plan prepared by a SCC planner, or any planner certified by the Natural Resource Conservation Service (NRCS), for all farm-scale BMPs and for those watershed-scale BMPs that receive cost-share funds, and;

Whereas the protection of water quality will be enhanced through a more cooperative and efficient approach, the undersigned agencies hereby acknowledge their respective roles in administering and enforcing water quality standards, and agree to the following:

## **GENERAL POLICIES**

- (1) BMP evaluations will be conducted by the SCC as requested by EPA and DEQ to provide reliable information concerning the condition of the BMP installation, maintenance, operation and monitoring. The timing of the visits will be established for the purposes of verifying a BMP's performance, for comparison with the NPDES permitted source's report of the BMP's effectiveness on the Reduction Credit Certificate

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<sup>1</sup> This document is available through the Internet, at its temporary location on EPA Region 10's website at [www.epa.gov/r10earth/](http://www.epa.gov/r10earth/) and then click on Index, then on "L" and then on "Lower Boise River Effluent Demonstration Project." The document website will soon be housed permanently on DEQ's website.

(RCC) and with the permitted source's records and documentation of any site visits it conducts. The permitted source will be held responsible for conducting its own inspections of the BMP site, or arranging with a qualified individual or company to conduct the inspection on their behalf, for the purpose of providing truthful and accurate information about the BMP's performance on the RCC and in their trade records. The recommended frequency of the inspections will be described for each BMP on the list of approved BMPs for the Lower Boise River Watershed's effluent trading program, developed by the BMP Technical Committee. The RCC is submitted to the Trade Tracking System, administered by the Idaho Clean Water Cooperative (ICWC). The ICWC collects the forms and records the data on behalf of EPA, establishing the phosphorous reduction credit based on the information provided on the form.

- (2) BMP evaluations by the SCC on behalf of EPA and DEQ will be for the sole purpose of verifying the validity of the phosphorus reduction credit used by the NPDES permitted source. Enforcement action by EPA concerning the validity of the credit will be taken against the NPDES permitted source involved in the purchase and use of the credit.
- (3) On-site BMP evaluations will be conducted using a checklist of those elements needed to provide quality assurance. All items on the checklist will be addressed and documented during the evaluation. Reviews begin with a visual evaluation of the BMP and may include the collection of water samples, soil tests, and photographs. Documentation of all surveys, tests, and analysis will be provided to establish an effectiveness record for EPA and DEQ of the BMP's actual installation, operation, maintenance, and performance at the time of the review. Additional written documentation needed to provide a performance level based upon the evaluation will be provided.
- (4) BMP evaluations previously conducted and properly documented by SCC may be substituted within a time period deemed appropriate to verify BMP performance.
- (5) Reasonable advance notice will be given to the property owner or lessee concerning the need to conduct on-site BMP evaluations.
- (6) EPA, DEQ, and SCC will meet on a regular basis to discuss program progress and issues. In addition, an annual review will be held each year between the EPA, DEQ and SCC to address issues regarding BMP evaluations and their comparison with the NPDES permit holder's report of the BMP effectiveness on the Reduction Credit Certificate (RCC) and with the permitted source's records and documentation of the site visits it conducts for the purposes of providing truthful and accurate information on the RCC. The timing of this review may coincide with the annual meeting of the parties to the Statement of Understanding and Responsibilities, which was signed April 21, 2000.

- (7) Written documentation of the BMP evaluation sampling results will be provided by SCC to EPA, DEQ, and the NPDES permitted source that purchased the credit generated by the reviewed BMP.
- (8) EPA, DEQ, and SCC files will be mutually available under applicable law to the EPA, DEQ, and SCC for inspection and copying. They shall respect the confidentiality of files or materials designated CONFIDENTIAL in accordance with federal and state regulations.

## **RESPONSIBILITIES**

### **EPA will:**

- (1) Follow its policies and practices in regulating those NPDES permitted sources choosing to participate in effluent trading in the Lower Boise River watershed, including reviewing the monthly Discharge Monitoring Reports and trade summaries.
- (2) Periodically review records retained by NPDES permitted sources associated with the credits they have purchased or sold, including credits generated by phosphorus reductions from BMPs installed by nonpoint sources.
- (3) Notify SCC and DEQ of BMP sites it would like the SCC to review based on EPA's inspection of the permitted source's records regarding purchased credits.
- (4) Administer and enforce the NPDES permitting program and carry out its designated responsibilities in the effluent trading project with the support of DEQ and based upon information provided by DEQ and the SCC. EPA will notify DEQ and SCC of any action taken to implement its responsibilities.
- (5) Meet with DEQ and SCC annually to review the performance of each agency under the terms of this agreement. EPA may choose to accompany DEQ on visits to NPDES permitted sources, and EPA and DEQ may accompany the SCC on visits to BMP sites.

### **DEQ will:**

- (1) Follow its policies and practices in administering water quality standards in the Lower Boise River watershed.
- (2) Continue to conduct inspections for permitted sources on EPA's behalf and investigate complaints about permitted sources' compliance with water quality standards.

- (3) Notify SCC and EPA of BMP sites it would like the SCC to review based on DEQ's inspection of the permitted source's records regarding purchased credits.
- (4) Administer water quality standards and carry out its designated responsibilities in the effluent trading project with the support of EPA and based upon information provided by EPA and the SCC. DEQ will notify EPA and SCC of any actions taken to implement its responsibilities.
- (5) Meet with EPA and SCC annually to review the performance of each agency under the terms of this agreement. DEQ may choose to accompany EPA on visits to NPDES permitted sources, and DEQ and EPA may accompany the SCC on visits to BMP sites.

**SCC will:**

- (1) Administer its programs designed to establish voluntary partnerships with nonpoint sources to address agricultural and TMDL water quality needs.
- (2) Conduct routine BMP evaluations funded through SCC cost-share programs.
- (3) Establish voluntary partnerships with nonpoint sources for implementation of BMPs to establish credits for purchase by permitted point sources and other market participants. Individuals voluntarily participating in a cost-share program are required to enter into a contractual arrangement for BMP implementation and performance. Contractual non-compliance and BMP nonperformance will be reported to DEQ and EPA as applicable and appropriate for the Lower Boise River effluent trading program.
- (4) Respond to requests from EPA or DEQ to conduct on-site BMP evaluations. The SCC will inform DEQ and EPA within 10 days of arrangements to conduct the requested evaluation. All requested BMP evaluations will be accomplished within 20 days. The Commission will provide reasonable notice to the nonpoint source where the BMP evaluation has been requested. The SCC will accomplish the BMP evaluation and may be accompanied by DEQ and/or EPA as appropriate.
- (5) BMP evaluations within another SCC program that were conducted previously and documented properly and were for BMPs eligible for the Lower Boise River effluent trading program may be substituted for new on-site reviews within a time period deemed appropriate to verify BMP performance.
- (6) Conduct the BMP evaluation using a checklist prepared by the BMP Technical Committee with assistance from EPA and DEQ, of those elements needed to provide quality assurance. Additional documentation needed to establish a performance level based upon the BMP evaluation will be provided.

- (7) Prepare a report of the requested BMP evaluation and provide copies within 30 days to EPA, DEQ, and the permitted source that purchased the credit generated by the BMP.
- (8) Work with individuals implementing BMPs to correct problems and document steps taken or recommendations made to the individual to improve BMP performance. SCC will document the relative significance of the corrective measures or any differences from BMP specifications that would improve the effectiveness of phosphorus removal within a performance range specified for that measured BMP or corresponding to a performance range defined by the uncertainty discount for that calculated BMP. Reports of SCC findings and corrective actions are documented and provided as part the SCC's BMP report to EPA and DEQ, who will determine if any enforcement action is needed against the NPDES permitted source that purchased the credit generated by the BMP.
- (9) Meet with EPA and DEQ annually to review the performance of each agency under the terms of this agreement.

#### **GENERAL PROVISIONS**

- (1) Nothing in this agreement should be construed as surrendering existing statutory or regulatory authority of any party.
- (2) Nothing in this agreement shall be construed to release an NPDES permitted source or a nonpoint source from complying with applicable local, state, or federal environmental statutes, regulations, permits, or consent orders.
- (3) It is mutually agreed that each party in this agreement intends to carry out all of its respective commitments and obligations under the terms of this agreement subject to appropriations or other authorization for funding in order to fulfill such commitments and obligations.
- (4) The term of this agreement shall be five years, unless otherwise revoked by any one of the signatory parties following thirty days notice to all parties. The five-year term of the agreement supports the five-year term of the NPDES permit. Changes in the terms of this agreement affecting the requirements of NPDES permitted sources in the effluent trading program may be incorporated when the NPDES permit is re-issued. This agreement may be amended or extended through mutual agreement of the parties. This agreement, when accepted by each agency, will be effective from the date of the last signature.

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**SIGNATORY PARTIES:**

U.S. Environmental Protection Agency, Region 10  
(for) Charles E. Findley, Acting Regional Administrator

/s/ \_\_\_\_\_ 4/27/01  
Date

State of Idaho, Department of Environmental Quality  
C. Stephen Allred, Director

/s/ \_\_\_\_\_ 4/27/01  
Date

State of Idaho, Soil Conservation Commission  
Jerry Nicolescu, Administrator

/s/ \_\_\_\_\_ 4/27/01  
Date