

Water Quality Trade Agreement

This Water Quality Trade Agreement (this "Agreement") is made by and between Heart of the Valley Metropolitan Sewerage District ("HOV") and the Wisconsin Department of Natural Resources ("WDNR" and together "the Parties").

1. Recitals

- a. Water quality trading is an alternative compliance option for Wisconsin Pollutant Discharge Elimination System ("WPDES") permit holders and is authorized by Wis. Stat. § 283.84.
- b. Wis. Stat. § 283.84(1)(e) provides that, "the [WDNR] may authorize a person required to obtain a permit to increase the discharge of pollutants above levels that would otherwise be authorized in the permit if the person... [r]eaches a binding, written agreement with [WDNR] under which the person constructs a project or implements a plan that results in reducing the amount of water pollution from sources other than the source covered by the permit."
- c. The WDNR has issued guidance regarding water quality trading, including:
 - i. A Water Quality Trading How to Manual, No. 3400-2013-03 (September 9, 2013); and
 - ii. Guidance for Implementing Water Quality Trading in WPDES Permits, No. 3800-2013-04 (August 21, 2013).
- d. WDNR will re-issue a WPDES Permit that will have the number WI-0031232-09-0 to HOV for wastewater discharges from its wastewater treatment facility in Kaukauna, Wisconsin.
- e. The WPDES Permit will contain total suspended solids ("TSS") water quality based effluent limits ("WQBELs") for HOV's Outfall, which is located in HUC-12 Subwatershed 040302040205.
- f. HOV owns a farm field (the "Field") in which the TSS credit generating practices are located. The Field is located in the HUC-12 Subwatershed 040302040204, which is a HUC 12 located adjacent to HOV's outfall but is located within the same TMDL reachshed as HOV's Outfall.
- g. The legal description of the Field is: NW NE SEC28 T21N R19E LESS HY 40AC M/L 8497M27, Parcel number 030014300 in the Town of Buchanan, Outagamie County, Wisconsin.
- h. An adjacent farm field ("Adjacent Farm Lands") and five residential properties ("Adjacent Residential Lands" and together "Adjacent Lands"), not owned by HOV, that drain to the

TSS credit generating practices involved in the proposed water quality trade can be identified as parcel numbers 030256500, 030256600, 030256700, 030256800, 030256900, 030015600.

- i. For the past three years the Field and the Adjacent Farm Lands have been in a traditional corn silage-alfalfa rotation. The Adjacent Residential Lands have been in residential use.
- j. HOV submitted to WDNR a Water Quality Trading Plan ("WQT Plan") which included a Construction Plan and an Operation and Maintenance Plan for a sediment basin which will be consistent with Natural Resources Conservation Services ("NRCS") Technical Standard 350 to capture surface water flow from the Field and Adjacent Lands, and which included an Establishment Plan and an Operation and Maintenance Plan for conservation cover on the Field consistent with NRCS Technical Standard 327, as documented in the WQT Plan.
- k. HOV has an agreement (Attachment 14 to the WQT Plan), which expires on or after the expiration date of permit WI-0031232-09-0, with the current owner of the Adjacent Farm Lands to ensure the land is managed according to the WQT Plan.

2. Agreement Terms

- a. HOV will construct the sediment basin and establish the conservation cover and maintain both practices consistent with the requirements in the WQT Plan, Construction/Establishment Plans and the Operation and Maintenance Plans.
- b. WDNR will re-issue the WPDES Permit to allow HOV to use water quality trading as a compliance option, in accordance with the WQT Plan as approved by WDNR.
- c. Subject to the terms of this Agreement and the terms of the WPDES Permit issued to HOV, WDNR will allow HOV to utilize TSS credits in the amount set forth in the approved WQT Plan to demonstrate compliance with total suspended solids WQBELs in the WPDES Permit.
- d. If the Adjacent Farm Lands are sold, HOV shall inform WDNR of the real estate transaction as soon as possible and identify whether the land will continue to be managed according to the WQT Plan.
- e. Unless the Agreement is terminated in accordance with Sections 2(g), 2(h) or 2(i) or is modified at permit reissuance, this Agreement will continue through the end date of each successive WPDES Permit term. In accordance with Wis. Stat. § 227.51(2), if HOV files a timely application for the reissuance or modification of the WPDES Permit, the terms of the Permit and this Agreement will continue until the later of the following: (1) the application has been finally acted upon by WDNR, (2) the last day for seeking review of the agency's decision, or (3) a later date fixed by order of reviewing court.
- f. Any duly authorized officer, employee or representative of WDNR shall have the right to access and inspect the Field so long as this Agreement remains in effect. HOV, through its

agreement with the owner of the Adjacent Farm Lands (Attachment 14 to the WQT Plan), shall ensure that WDNR staff and representatives have the right to access and inspect the Adjacent Farm Lands at reasonable times and upon notification so long as this Agreement remains in effect.

- g. The Parties may terminate this Agreement by written mutual agreement at any time.
- h. HOV may terminate this Agreement by providing at least sixty (60) days written notice to WDNR of HOV's intent to terminate the Agreement.
- i. In accordance with the procedures and requirements of § 283.53(2), Wis. Stats., and Wis. Admin. Code §§ NR 203.135 and 203.136, WDNR may terminate this Agreement if, after providing HOV notice, an opportunity to discuss with WDNR, and a reasonable period of time to correct or address any of the conditions listed below, any one of the following occur:
 - i. HOV fails to implement the WQT Plan as approved;
 - ii. HOV fails to comply with WPDES Permit terms and conditions related to water quality trading;
 - iii. New information becomes available that causes WDNR to determine that water quality trading is no longer an acceptable option.
- j. Any action by WDNR to terminate this Agreement or otherwise to reduce or eliminate the number of TSS credits in the approved WQT Plan shall be implemented and become effective only through a modification of the WPDES Permit.
- k. This Agreement may be amended only by a further written document signed by each of the Parties.
- l. This Agreement shall be effective upon signature by both Parties.
- m. This Agreement shall be interpreted pursuant to the laws of the State of Wisconsin.
- n. This Agreement may be executed in one or more counterparts, and all such executed counterparts shall constitute the same agreement. A signed copy of this Agreement transmitted by facsimile or email shall be treated as an original and shall be binding against the party whose signature appears on such copy.
- o. If any provision of this Agreement is held invalid or unenforceable, the invalidity or unenforceability shall be limited to the particular provision involved and shall not affect the validity or enforceability of the remaining provisions, and the Parties shall work together in good faith to modify this Agreement if necessary to preserve its original intent.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year entered below.

Heart of the Valley Metropolitan Sewerage District

By: Brian Helminger

Name: Brian Helminger

Title: District Director

Date: 2/14/18

Wisconsin Department of Natural Resources

By: Sharon L. Coayan

Name: Sharon L. Coayan

Title: Water Quality Bureau Director

Date: 2/29/18