

Water Quality Trading Overview

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What is Water Quality Trading (trading)?

- Permitted entities under the Clean Water Act may apply off-site pollution reductions towards their permit compliance
- Limited to water quality based effluent limits
 - Cannot trade to meet federal-based limits

Most Narrow Definition - Discretionary option for the permit writer and the permitted entity to consider

Legal Authority under Clean Water Act

- “Water Quality Trading” does not appear in the Clean Water Act, nor EPA regulations
- 2003 Water Quality Policy issued by US EPA
- “EPA supports implementation of water quality trading by states, interstate agencies and tribes where trading”
- EPA has reiterated its support numerous times to the public, states, and Congress

Helpful Definitions

TMDL (Total ~~Daily~~ Maximum Load)

- Total pollution load, or cap
- Could be daily, weekly, monthly, annual, or a mix
- Part of the TMDL cap is regulated with permit (point source)
- Part of the TMDL cap is not federally regulated (non-point source)

Point Source

- Must have a permit to discharge set level of pollution
 - e.g., industrial or municipal wastewater treatment plant
 - e.g., large urbanized areas

Non-point Source

- Everything else not subject to federal permits

Baseline

- The pollution load, below which you may generate and sell credits

2003 Water Quality Policy: Section III, A through H

<http://water.epa.gov/type/watersheds/trading/tradingpolicy.cfm>

- A. Consistent with the CWA
- B. Within a watershed, or, within TMDL area if exists
- C. Nitrogen, Phosphorus, Sediments, others case-by-case
- D. Baseline – Permit limit for point source. For non-point sources use state regulations or TMDL, whichever more stringent
- E. Trading can be used pre-TMDL, or post-TMDL
- F. Uphold all caveats of permitting (too detailed to list)
- G. Elements of trading programs (too detailed to list)
- H. EPA's oversight is basically to approve or not approve permits that use trading as a compliance option

Some Key Points

- The existence of a TMDL matters
 - If TMDL, then TMDL defines the trading area
 - If TMDL, then TMDL defines the non-point source baseline. Even though the non-point source portion is not regulated
- EPA does not require “market based”, or inclusion or exclusion of non-point sources (see narrow definition 2nd slide)
- EPA encourages using trading as it best serves the larger public and stakeholders working together
- EPA does not approve or disapprove a trading program, EPA approves or disapprove individual permits and trades

Challenges and Opportunities

- Unlike air emissions trading under the Clean Air Act, the buyer (point source) is held liable if the credits are invalidated
 - Solutions could include an insurance pool of credits, or “last resort” credits held by the regulator, etc.
- Buyers and non-point source sellers have differing cultures, economic realities, motives, etc.
 - Solution could include third party brokers, trust building, or operate the purchase of credits as a mere extension of existing farm conservation programs, etc.
- Credit Demand – “Build it and they will come” requires forward vision and honest talk about permits and regulations
 - Solutions could include “building it” in advance of regulations, and say so the whole way through the process

The Key Points

- Trading is a compliance tool that has sparked innovative ideas as to best address water quality
- Virtually every state that has looked at trading has taken a unique approach
- EPA's role is very narrow, but critical, in which EPA has to date refrained from prescribing more details

The next three presentation showcase different approaches.