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.