

Issues & Overview

EPA's Water Quality Trading Policy

The 1972 Federal Water Pollution Control Act, more commonly known as the Clean Water Act, established a complex framework for the protection of surface waters in the United States. Originally, the Clean Water Act focused on the development of technology-based and water quality-based limits for individual industrial and municipal dischargers. In recent years, that focus has shifted to emphasize approaches that protect water quality on a watershed-wide basis. These approaches, most notably EPA's Total Maximum Daily Load ("TMDL") program and the much anticipated Watershed Rule, will establish maximum pollutant loadings for each body of water and then allocate those loadings to point source dischargers in the form of permit limits. The TMDL and its sister programs have the potential to significantly impact industrial dischargers by reducing their discharge allowances to levels that, at best, require the installation of costly new treatment technologies and, at worst, are technologically unachievable.

On January 13, 2003, EPA announced a market-based "Water Quality Trading Policy" ("2003 Policy"), authorizing users of a water body to trade pollution credits among themselves in order to cost-effectively achieve the pollutant reductions mandated by the TMDL and other programs. The 2003 Policy "allows one source [of water pollution] to meet its regulatory obligations by using pollutant reductions created by another source." Entities that discharge into the same watershed may enjoy increased flexibility by working together to reduce discharges of certain pollutants. Dischargers may accomplish this by securing the necessary discharge reductions from the sources in the stream segment that are able to achieve those reductions at the least cost. For instance, pollutant reductions obtained through improved land management practices might be utilized in lieu of potentially less effective or prohibitively expensive "end of pipe" technology. The goal is to achieve water quality standards by addressing the least costly sources of pollution instead of targeting only point sources simply because they are already regulated.

Even under the 2003 Policy, however, significant impediments to trading remain. EPA's 2003 Policy endorses the trading of nutrients (such as the trading of total phosphorus and total nitrogen) and the trading of sediment loads. At this time, however, the 2003 Policy does not support trading approaches for other pollutants. Moreover, the states are the primary managers of the Clean Water Act program and there is no assurance that, given their financial situations and diverse programs and politics, individual states will embrace water quality trading programs. Even in states with an interest in allowing trading, regulators still must grapple with the details of creating a successful trading program. For instance, states must determine acceptable units of measurement that will define a trade, and evaluate how to quantify pollution "credits" for reductions in pollution. States also must define how they will assess the success of a trade and determine compliance with the new requirements. They will want easily understood goals that can be easily measured. States also will have to be able to explain and defend these goals to community stakeholders.

The 2003 Policy is best seen as an invitation for industrial dischargers to develop trading approaches to further pollution reduction goals, including using water quality trading projects as alternatives to meet the additional obligations imposed by the new watershed approaches to pollution reduction. Thus, industry should be proactive and creative to help and to encourage states to initiate such programs. Among other things, prospective traders may need to identify trading partner(s) in their own watersheds, come up with methods to quantify and to confirm pollution reductions, and satisfy regulators and the public alike that trades are consistent with law and good for the receiving water. The option to use this market-based approach, however, should over time prove to be an important tool in achieving additional layers of environmental protection in a cost-effective manner.

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