

B. Reduces the cost of implementing TMDLs through greater efficiency and flexible approaches.

C. Establishes economic incentives for voluntary pollutant reductions from point and nonpoint sources within a watershed.

D. Reduces the cost of compliance with water quality-based requirements.

E. Offsets new or increased discharges resulting from growth in order to maintain levels of water quality that support all designated uses.

F. Achieves greater environmental benefits than those under existing regulatory programs. EPA supports the creation of water quality trading credits in ways that achieve ancillary environmental benefits beyond the required reductions in specific pollutant loads, such as the creation and restoration of wetlands, floodplains and wildlife and/or waterfowl habitat.

G. Secures long-term improvements in water quality through the purchase and retirement of credits by any entity.

H. Combines ecological services to achieve multiple environmental and economic benefits, such as wetland restoration or the implementation of management practices that improve water quality and habitat.

III. Water Quality Trading Policy Statement

A. *CWA Requirements.* Water quality trading and other market-based programs must be consistent with the CWA.

B. *Trading Areas.* All water quality trading should occur within a watershed or a defined area for which a TMDL has been approved. Establishing defined trading areas that coincide with a watershed or TMDL boundary results in trades that affect the same water body or stream segment and helps ensure that water quality standards are maintained or achieved throughout the trading area and contiguous waters.

C. *Pollutants and Parameters Traded.* EPA supports trading that involves nutrients (e.g., total phosphorus and total nitrogen) or sediment loads. In addition, EPA recognizes that trading of pollutants other than nutrients and sediments has the potential to improve water quality and achieve ancillary environmental benefits if trades and trading programs are properly designed. EPA believes that such trades may pose a higher level of risk and should receive a higher level of scrutiny to ensure that they are consistent with water quality standards. EPA may support trades that involve pollutants other than nutrients and sediments on a case-by-case basis where prior approval is provided through an NPDES permit, a TMDL or

in the context of a watershed plan or pilot trading project that is supported by a state, tribe or EPA.

EPA also supports cross-pollutant trading for oxygen-related pollutants where adequate information exists to establish and correlate impacts on water quality. Reducing upstream nutrient levels to offset a downstream biochemical oxygen demand or to improve a depressed in-stream dissolved oxygen level are examples of cross-pollutant trading.

EPA does not currently support trading of pollutants considered by EPA to be persistent bioaccumulative toxics (PBTs). EPA would consider a limited number of pilot projects over the next two to three years to obtain more information regarding trading of PBTs. EPA believes pilot projects may be appropriate where the predominant loads do not come from point sources, trading achieves a substantial reduction of the PBT traded and where trading does not cause an exceedance of an aquatic life or human health criterion. Based on the findings of these pilot projects, EPA will consider making revisions to its policy.

Where state or tribal water quality standards allow for mixing zones, EPA does not support any trading activity that would exceed an acute aquatic life criteria within a mixing zone or a chronic aquatic life or human health criteria at the edge of a mixing zone using design flows specified in the water quality standards.

D. *Baselines for Water Quality Trading.* As explained below, the baselines for generating pollution reduction credits should be derived from and consistent with water quality standards. The term pollution reduction credits ("credits"), as used in this policy, means pollutant reductions greater than those required by a regulatory requirement or established under a TMDL.

For example, where a TMDL has been approved or established by EPA, the applicable point source waste load allocation or nonpoint source load allocation would establish the baselines for generating credits. For trades that occur where water quality fully supports designated uses, or in impaired waters prior to a TMDL being established, the baseline for point sources should be established by the applicable water quality based effluent limitation, a quantified performance requirement or a management practice derived from water quality standards. In these scenarios the baseline for nonpoint sources should be the level of pollutant load associated with existing land uses and management practices

that comply with applicable state, local or tribal regulations.

E. When Trading May Occur

1. *Trading to Maintain Water Quality Standards.* Trading may be used to maintain high water quality in waters where water quality standards are attained, such as by compensating for new or increased discharges of pollutants.

2. *Pre-TMDL Trading In Impaired Waters.* EPA supports pre-TMDL trading in impaired waters to achieve progress towards the attainment of water quality standards. EPA believes this may be accomplished by individual trades that achieve a net reduction of the pollutant traded or by watershed-scale trading programs that reduce loadings to a specified cap supported by baseline information on pollutant sources and loadings.

EPA also supports pre-TMDL trading that achieves a direct environmental benefit relevant to the conditions or causes of impairment to achieve progress towards restoring designated uses where reducing pollutant loads alone is not sufficient or as cost-effective.

If pre-TMDL trading does not result in the attainment of applicable water quality standards, EPA expects a TMDL to be developed. After a TMDL has been approved or established by EPA, the reductions made to generate credits for pre-TMDL trading may no longer be adequate to generate credits under the TMDL. This will depend on the remaining level of reduction needed to achieve water quality standards and, where applicable, the allocation of point and nonpoint source pollutant loads established by the TMDL.

3. *TMDL Trading.* Trades and trading programs in impaired waters for which a TMDL has been approved or established by EPA should be consistent with the assumptions and requirements upon which the TMDL is established. EPA encourages the inclusion of specific trading provisions in the TMDL itself, in NPDES permits, in watershed plans and the continuing planning process. EPA does not support any trading activity that would delay implementation of a TMDL approved or established by EPA or that would cause the combined point source and nonpoint source loadings to exceed the cap established by a TMDL.

4. *Technology-Based Trading.* EPA does not support trading to comply with existing technology-based effluent limitations except as expressly authorized by federal regulations. Existing technology-based effluent guidelines for the iron and steel