

Comments on EPA's Proposed Water Quality Trading Policy
Docket Number W-02-07

The Pennsylvania Department of Environmental Protection (PADEP) would like to thank EPA for providing an opportunity to comment on its Proposed Water Quality Trading Policy. The policy incorporates numerous concepts and ideas that are critical to effectively designing a trading program.

PADEP commends EPA for taking a leadership role in the formulation and drafting of this policy. PADEP believes that a properly designed water quality trading program has the potential to deliver environmental and economic benefits. We view trading as a potential additional tool in our toolbox of results-oriented methods of achieving environmental improvements. Trading has a number of possible applications in Pennsylvania. For example, it could assist us in meeting our TMDL and Chesapeake Bay 2000 Agreement commitments, or it could be used to address watersheds impaired by abandoned mine drainage. We look forward to working with EPA on this and other innovative approaches for addressing water quality issues.

We encourage EPA to continue to promote flexibility in the proposed policy and in its ensuing role in the trading process in order to ensure a successful program that will supplement and enhance current water quality regulations. For example, we will need to ensure that implementation of the policy will not result in the re-opening of a TMDL anytime that a trade occurs. We also encourage EPA to ensure that flexibility is allowed for states to pursue trading outside TMDL regulatory frameworks. An example of a non-regulatory framework that involves Pennsylvania is the current effort to reduce loadings to the Chesapeake Bay. The program's current design is voluntary, in the hope that restoration goals will voluntarily be achieved, meaning that a TMDL would not need to be developed. Trading is a tool that may be helpful for Pennsylvania as it designs tributary strategies to meet its Bay commitments, so we ask that flexibility be maintained to allow trading to work within this, and other, non-TMDL frameworks. Certainly, these and other potential challenges can be addressed if flexibility is maintained after the policy is finalized.

Based on our experience as part of a team that developed trading guidelines for the Chesapeake Bay, we suggest that EPA consider adding language to the proposed policy encouraging states to maximize public input during the development of a trading program. The current form of the policy recognizes the importance of public participation, but we suggest strengthening that language.

Some other specific comments:

Section II B. Policy, Number 2, Page 3 "EPA also supports trading among pollutants (cross-pollutant)..." PADEP encourages EPA to continue investigating possible sources of funding to help develop methodologies for evaluating and comparing credits earned for different pollutants.

General Element Number 3, Page 5 “Standardized protocols to quantify pollutant loads...” We agree that states and tribes should be given the opportunity to develop procedures to account for the generation and tracking of credits. We again encourage EPA to maximize flexibility for the states in this area.

General Element Number 6, Page 6 “Program evaluations.” This section includes a number of good suggestions that may be limited due to funding considerations. EPA’s recent action to make funds available for trading projects was a good first step in addressing the funding issue. We encourage EPA to continue making available these types of assistance, and also encourage the development of new, independent sources of funding.

Provisions To Be Consistent With The CWA, Item 10, Page 8 “State or Tribal antidegradation policies should include provisions addressing when trading can occur without requiring antidegradation review.” PADEP agrees that states need to address antidegradation issues as part of the development of a trading program. We suggest that EPA consider more flexibility as to where these details would be outlined, as there are possibilities other than antidegradation policies. For example, a state could outline these provisions in their trading policy.

Provisions To Be Consistent With The CWA, Item 12, Page 8 “...Reductions greater than required to achieve the level of reductions established by a TMDL are necessary to create a surplus allowance.” Clarification on this sentence would be helpful. The way the sentence is written, it is not clear whether the entire level of reductions required by the TMDL must first be met before *any* trading could occur, or whether individual sources (potential generators of credits) must first meet their individual required level of reductions in order to create credits.

Sincerely,

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PA Department of Environmental Protection