

Discussion Session #1: BARRIERS AND SOLUTIONS IN THE MARKET

The comments summarized from the flip charts in this discussion session could be categorized into five central themes to identifying barriers and solutions in the water quality trading market:

1. *Uncertainty as a Barrier.* Participants commented there appears to be uncertainty in the regulatory framework for WQT and a lack of an institutional mechanism to address overall uncertainty. Participants revealed concern over the liability issues for buyers of credits – uncertainty on who bears the risk for failure of credit generation. They stated there is uncertainty regarding the amount of credits available for sale as a result of installing a particular BMP. Further, they identified there is a lag time for credit generation associated with certain activities, the time involved to run models and to establish a trading program. Finally, the participants felt a barrier exists in ensuring sellers have confidence in trading programs.

Solutions for Overcoming Uncertainty. The group indicated the necessity to develop institutional mechanisms to address uncertainty, including the issue of creating hot spots (a suggestion was made for regulating non-point sources, e.g., urban, agricultural, etc.). Participants stated that transparency is necessary to overcome the lack of uncertainty. Participants felt transparency and credit verification is possible through developing contractual agreements outside of NPDES permits. Participants felt it was important to develop contractual agreements that farmers would be more comfortable with, something akin to EQIP. The group suggested such a contractual agreement should reduce risk by knowing where impairments exist before entering a trading program and the agreement should establish dual NPDES liability, identify an insurance pool and backup credits. The group recommended that such a contractual agreement include more detailed information relevant to the parties involved in trading, specific pollutants being traded, and the period of trading. With respect to the uncertainty with quantifying credits generated as a result of implementing BMPs, the discussion revealed the necessity for determining actual credit values associated with BMPs; also the necessity for using the “best” data available for greater certainty. A comment, “learn from mistakes,” was made, relative to certainty. Stakeholders need to believe the data are credible. In addition, the group identified it is necessary to foster confidence in credit sellers in order to overcome uncertainty. Further, a commenter noted that it is important to ease the farm (and non-farm) community’s understanding of credit generation and availability.

2. *Barriers Related to Various Stakeholder Groups.* The group commented it appears to NGOs and environmental groups that trading is “an insider’s game.” Further, the group stated that the environmental community is not well represented in the trading arena (someone named Clean Water Action and commented they don’t understand trading). Also stated was that groups including

farmers, developers, home builders, and investors were not represented at the conference and have not been involved in the discussions (someone offered the website: www.NHB.org; however, when checked it does not appear relevant - it leads you to the National Honey Board. Possibly www.nahb.org: National Association of Home Builders). Along the same lines, it was noted that WQT “is a stove pipe and does not attract the interest of environmental groups because it does not appeal to their interests in wildlife, etc.” Further, WQT is not currently appealing to the goals and interests of environmental groups, developers, farmers, and home builders. However, another commenter noted that environmental groups do not have the money to participate in WQT.

Solutions to Stakeholder Issues. The group noted the need for EPA to involve more environmental groups in WQT; communicate the necessity for WQT and the benefits achieved through trading; and encourage and invite environmental groups to shape trading programs early in the process. Increased (wider, broad-scale) participation may be realized through developing trading programs in an open process and with encouragement for wider involvement during the process. Further, the group recommended inviting the individuals representing the buyers and sellers (e.g., home builders, farmers, etc.) to be involved in the process of developing the trading program; as a means of bringing groups into the process and gather opinions on what are considered barriers and solutions. The group stated it is necessary to understand (a) why stakeholders want to be involved; (b) the goals and priorities of different stakeholder groups (e.g., home builders, farmers, environmental groups, etc.), since they all have different reasons for participating and hope to gain different benefits from trading. A suggestion was made to hold a type of “trade show” as part of developing a trading program, as a means of identifying exactly what is being sold and for how much. Finally, the group identified the need to make WQT worthwhile to overcome the issue of a lack of money in the environmental community.

3. *Inertia as a Barrier.* Various comments identified inertia as a barrier in the trading market: there exists “bureaucratic and social inertia to trading.” Some cited the initialization of trading programs as a barrier – too few trades lead to even fewer trades, thus bringing on ultimate failure. Someone offered a counterpoint to that, suggesting initiating trading even in the absence of an abundance of trades. The group identified another example of inertia: someone noted there is no consequence for the inaction of buyers and sellers, and noted that incentives are skewed towards the point sources. The audience also stated that currently there is no value or price established or associated with clean water, as there is a value associated with duck habitat.

Overcoming Inertia. The group suggested reaching out to different skill sets and examine complexity models (e.g., sociology); look at things from a different point of view and adapt old tools to trading situations. From the regulatory point of view, the group recommended developing TMDLs as a means of “telling people no”; this commenter also stated that groups would have to participate in trading in

order to accommodate growth. Finally, the group cited the need to place a value on clean water – emphasizing it should be enough value to trigger action to participate in trading.

4. *Geographic Scale as a Limiting Factor.* The group noted that watershed areas are too small to maintain a viable market and there is a lack of large geographic-scale TMDLs to drive trading. Overall, the discussion revealed opinions that there are limitations on the geographic scale of trading programs.

Solutions for Overcoming the Limits of Geographic Scales Related to Trading.

The discussion revealed the overall need for launching large-scale pilot programs to demonstrate the viability of WQT. In addition, the group suggested using large watersheds to develop trading programs, to allow farmers to aggregate (the group identified the Chesapeake Bay as an example of a large watershed). Further, the group suggested developing large geographic-scale TMDLs as a means to getting trading started. Finally, the group suggested using credit mechanisms (e.g., equivalency and location ratios/translation factors) to allow for larger-scale trading; perhaps assign a better ratio to locations that are considered a priority area for trading.

5. *Regulatory Factors as a Barrier to Trading.* The group noted the lack of an integrated regulatory framework, citing an example that “TMDLs and water quality criteria are at odds with one another”; and stated the programs are not in alignment with the ultimate goal. A commenter noted the “government changes the rules of the game.” The audience also stated that WQT jargon is not understandable by the general public. The group also stated the government applies the Clean Water Act as a tool when it isn’t required (e.g., requiring sellers to be a part of a general NPDES permit). The audience also cited the NPDES liability of the point source as a potential barrier to trading. With respect to TMDLs, the group noted the lack of nutrient TMDLs and thus groups are not being refused additional development and expansion; there is a lack of economic incentive for growth accommodation. The group noted EPA’s Trading Policy discourages the trading of persistent bioaccumulative toxics (PBTs) could be a potential barrier. The audience mentioned the development of numeric criteria for the causal variables on Nitrogen and Phosphorus. Further, the use of concentration-based effluent limitations was also cited as a potential barrier. Finally, it was stated that government is trying to make trading too complicated for people to participate; for instance, it is not simple enough for farmers to understand without the help of lawyers.

Solutions to Regulatory Barriers. The audience recommended integrating the regulatory framework (i.e., TMDL, trading, etc.) and ensuring alignment towards the ultimate water quality goal. A comment was made with respect to keeping the rules consistent; consistency ensures participant understanding which in turn encourages involvement. The group highlighted the need to use market-based universes of solutions to water quality issues and stressed the need for strong

communication and understanding of objectives. The discussion emphasized the importance of developing a comprehensive communication strategy, which would increase understanding by the public, with respect to terms and definitions used between EPA Regions, state agencies, and the public – limiting the use of “agency-speak.” The group suggested including multiple sources for trades; secure more trades earlier in the process; whereas a counterpoint was offered: start out slowly, allowing for improvements to the process to be made and use pilot programs to get tools, skills, and frameworks in place. The group recommended (possibly as a solution to the current complexity of trading) simplifying the process to shorten the timeframes for buying credits, completing paperwork, and drafting/issuing NPDES permits. The group mentioned the development of numeric criteria for the response variables on Nitrogen and Phosphorus. Further, the use of load-based effluent limitations was also cited as a potential solution. With respect to the potential barrier regarding EPA’s Trading Policy limit on the trading of PBTs, the group stated that EPA should clarify or update the policy on trading PBTs. The audience also suggested defining the consequences for both point and non-point sources for not trading. Along similar lines, the group mentioned the need for clarification on responsibility for failure to secure/generate credits (“since it is a clean slate, opportunity exists to spread around risk/consequences”).

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