Nutrient Credit Trading Programs: A Policy Primer for Interested State Legislators

Note: NCEL does not take a position on or endorse any particular piece of legislation. This policy primer is designed to provide a baseline of information for lawmakers as you consider whether or not an issue is right for your state/region.

Background

In response to the Chesapeake Bay Total Maximum Daily Load (TMDL) “pollution diet” for the Bay that has been entered into by the federal government, Chesapeake Bay Watershed states and the District of Columbia many jurisdictions are considering the implementation of nutrient credit trading programs. This policy primer will provide some of the basic information regarding nutrient trading programs and a set of principles to consider when developing a state-based program.

Pollution trading is a market-based strategy intended to rapidly and cost-effectively meet environmental quality goals. Trading programs establish permanent pollution goals, or “caps” for sources of pollution. The program then allows one source (the buyer) to meet its regulatory obligation by paying another (the seller) for credits generated by the seller’s having reduced its pollution below established pollution limits.

The purpose of the trading is to allow flexibility to capitalize on different efficiencies (economic, physical, space, time, etc.) among and between pollution sources to help meet pollution reduction targets more effectively. Trading is a supplement to traditional pollution reduction programs such as hard limits on point source pollution and non-regulatory cost-share programs that have historically driven reduction of non-point source pollution.

Historically, most states have limited pollution trading to point source pollution. Be it from a smokestack, a tailpipe, or wastewater treatment facility these sources have a certain “point” in which the level of pollution can be measured, and progress towards reducing that pollution can be verified. These point sources are then allowed to trade credits within a certain geographic region, such as a watershed, ensuring that the aggregate pollution reduction benchmarks are met.

Moving forward, many states have indicated an interest to expand nutrient credit trading as a tool to cost-effectively meet pollution reduction standards. While this concept may hold promise for stretching the resources of states and localities there are several principles which can help shape the decision-making process:

1. **Nutrient credit programs should result in actual improvements in water quality.** Strong nutrient credit programs require that every trade lead to the retirement of a percentage of the state’s credits. If credits are not retired the program will simply shift pollution from one area to the other by allowing a source to trade more credit than has actually been produced. These credits retired represent a net pollution reduction.

2. **Only credits or offsets that constitute quantifiable net pollution reductions may be traded.** Prior to opening up a pollution source to trading, states should be certain that pollution
reductions can be verified. If non-point agricultural sources are to trade with urban stormwater or wastewater treatment then the state should be able to demonstrate that these reductions have occurred through filing of resource management plans and their updates, water quality testing and a system to verify that those best management practices have been instituted.

3. **Protection of local water quality must be paramount.** When states consider setting up a nutrient trading program it is paramount that local water quality limitations must be maintained. Trades should be allowed only in close proximity to the site or facility that is the seller of the credit. This ensures that qualifying pollution reductions indeed occur where they are being applied.

4. **Point sources which acquire non-point credits should be required to buy more of the credits to ensure actual pollution reductions.** Based on the acknowledgement that achievement of pollution reductions from non-point sources (i.e. agricultural best management practices) are more difficult to verify than point source reductions states should require a higher degree of credits to be purchased to meet reduction targets. This provision can help to address the inherent uncertainty of non-point source best management practices and the absence of site-specific discharge monitoring.

5. **All trading programs should be transparent to the public, subject to verification and fully enforceable.** By making trading programs more transparent and allowing the public to see what trades and offsets are being offered and made will improve the public’s acceptance of the trading program. A public registry, available online, is a tool that several states have used to build public confidence. It is also important to ensure that state agencies conducting the program and carrying out the oversight have the necessary personnel and resources to carry out the program. States should avoid leaving oversight to credit generators, credit brokers or permit holders.

6. **All trading must comply with Clean Water Act programs.** State law cannot preempt the Clean Water Act. For this reason, states should consult with EPA about the development of nutrient trading programs to ensure that existing changes to existing permits administered by the state will not violate current agreements with the EPA.

7. **Provide a reliable and transparent method for determining how new and emerging pollution reduction technologies are allowed to enter the marketplace.** States should establish a review process based on the best available science to determine if a new technology will provide improvements in nutrient reduction. Programs should be evaluated on scientific, technical and cost-effective levels to determine whether or not they should enter the market.