

ROOTS & BRANCHES: AIR EMISSIONS TRADING 1979-89

POSSIBLE LESSONS FOR NUTRIENT/WQ TRADES

**Chesapeake Bay Program Trading & Offsets Work Group
16 December 2015**

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HISTORY MATTERS

- Air is not Water (let alone Nutrient/WQ trading). BUT
- Huge body of experience (design; implementation; legal resolutions; roadblock removals; mid-course corrections; constituency building; program expansions / transferals) from Air Emissions Trading 1979-1989
- Experience (“lessons learned”) = state agencies, affected sources, env/citizen groups (not just EPA HQ/Regions)
- Nat’l, int’l success story
 - Acid Rain, other explicit CAA programs (1990 --)
 - EU ETS (2005), RGGI (2006), Western Climate Initiative (2007 --)
 - EPA Clean Power Plan (2015) : integration & summary
 - COP 21 (Paris) : outcomes/implications
 - broad general support = env groups, industry, gov’ts, others

HISTORY MATTERS (2)

- ET started from where CPB Nutrient Trading seems to be now
 - intense env grp suspicion, despite lack of conventional progress
 - legal / policy concerns: loopholes, backsliding, paper trades, windfalls, source “gaming” / manipulation
 - faith in end-of-pipe controls, not plans to secure reductions
 - problematic agency resources, modeling, monitoring / verification, enforcement assurance, in many cases
 - multiple constraints to mitigate concerns = risky / difficult to use
 - grafting market approaches onto ‘command / control’ base
- How ET got here = potential roadmap to sidestep / leapfrog past pitfalls, build on past rationales / resolutions

EVOLUTIONS, 1979-1989: 'Aggressive incrementalism'

- Gradual removal of constraints = broader faster use, early 'success stories'
- Significant tightenings where needed for env. integrity
- Original Bubble Policy (proposed 1/79; final 12/79)
- Massive listening / outreach (Regions, states, env grps, candidate sources)
- Parallel SIP processing (1980), first "Generic Bubble Rule" (1981)
- Transparent ongoing tracking / reporting: pending apps, results
- Interim ET Policy & TID: Rules for Creating, Banking, Using ERCs (1982)
- Independent outside 'bubble' reviews (e.g., WWF 1983)

EVOLUTIONS, 1979-1989 (2)

- ‘Shutdowns’ Notice (1983)
- *Chevron v. NRDC* (Supreme Court, 1984)
- Final ET Policy & TID (1986): “progress not inconsistent with a Plan”
- Lead-in-gasoline phasedown trading & banking (1982, 1985)
- Mobile source trading measures (fleetwide, interfleet)(1986 --)
- NSPS Compliance Bubble Policy (1987)
- Sector-wide tradeable phasedown permits (asbestos; CFCs) (1985-88)
- Stack Heights Emissions Balancing Policy (1988)

OUTFALLS TO WATER

- “Steel Bubble” (1984)
- Wetlands Mitigation Banking / Trading Guidance (c. 1986)
- Water Innovations Project (1982--)
 - Multiple point / point, point / NPS case studies (Dillon Reservoir, Fox River, Kanawha River, Tar-Pamlico Basin)
 - frameworks / recommendations for EPA Water Trading Policy
 - detailed model NPS permit, other implementation mechanisms
- GAO : ‘Point/NPS Trading Could Reduce Compliance Costs if Uncertainties [discouraging use] Are Resolved ‘ (1992)
- OW Draft WQ Trading Policy Framework (1996), Initial Guidance (2003)

PROLIFERATION: FULL-BLOWN “AIR” PROGRAMS, 1989 →

- 1990 Clean Air Act Amendments: Acid Rain, Air Toxics ERP, other auth'ns
- NOx SIP Call (1998)
- Regional Haze Trading Rule (1999)
- Clean Air Interstate Rule (CAIR) (2005)
- Clean Air Mercury Rule (CAMR) (2005)
- Cross-State Air Pollution Rule (CSAPR) (2011)
- Clean Power Plan (2015)
- REC (RPS) Trades (2005); RINs (RFS) Trades (2008 --)

WHATEVER THE MEDIUM, CORE ISSUES SEEM THE SAME

SUBSTANTIVE: STRIKING REASONABLE BALANCES

- Appropriate (yet workable) baseline, addressing buyer/seller fears *and* environmental concerns
- “Equivalent” reductions
- “Surplus” reductions, where Plan not approved or achieved?
- Credit for shutdowns, other curtailments
- “Anyway reductions”
- “Confiscation”
- New versus existing sources
- Reductions “at the source” or “in the air”
- “Progress” from each trade, and / or “in the overall plan”

CORE ISSUES SEEM THE SAME (2)

PROCEDURAL

- Making applications faster/ easier to develop/decide
- Minimizing “late hits & 2nd guesses”
- Getting early “success stories” w/*sufficient* integrity
- Building trust / durable constituencies, despite inevitable mid-course corrections

SOME IMPLEMENTATION PRINCIPLES

- *Outreach*: listen before rolling out; keep listening
- *Anticipate* – e.g., “first in line” reluctance (likely candidates = the most to save or earn)
- Stakeholder trust *must be earned* (takes input, transparency, feedback loops, time)
- Don’t over-promise; *or* seek perfection – trading is a tool, not a panacea
- *Start small* if necessary, lay foundations for expansion
- *Get it out on the street* to start being used
- “Airtight” trading regimes = seldom mandatory, likely won’t get used

IMPLEMENTATION PRINCIPLES (2)

- Let user/stakeholder feedback build pressure for sensible 'fixes'
- Give users maximum certainty, consistent w/statute
- 'Nonattainment' = existing-source issue; new source measures = insurance to backstop existing-source reductions needed to 'attain'
- Yardstick = progress from trading versus *how CWA actually works (or doesn't) on ground* -- not versus an ideal CWA that doesn't exist
- Take trading's *dynamic aspects* fully into account (e.g., will better info on sources, discharges , NPS reduction levels improve the program over time?)
- Many reduction uncertainties can be sufficiently mitigated short-term, will scrub themselves out (become trivial) seen on overall long-term horizon

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