

ENSURING PROTECTIVE BASELINES: THE EPA PERSPECTIVE

Amelia Letnes

USEPA

Regulatory Basis for Water Quality-Based Effluent Limitations (WQBELs)

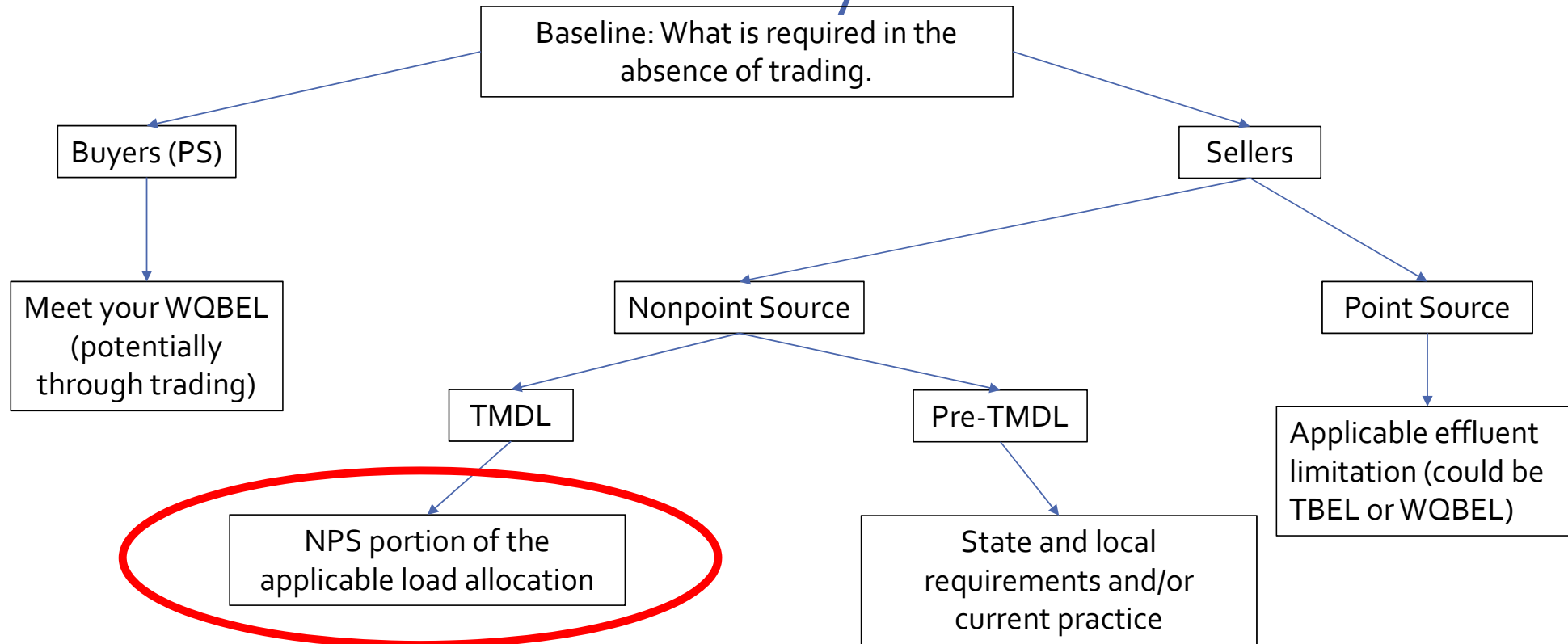
- Clean Water Act Section 301(b)(1)(C)
 - *...necessary to meet water quality standards, treatment standards, or schedule of compliance ... or required to implement any water quality standard established pursuant to this Act.*
- Code of Federal Regulations, Volume 40, Section 122.44(d)(1)(vii)
 - (vii) When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:*
 - (A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from and complies with **all applicable water quality standards;***
and
 - (B) Effluent limits developed to protect a ... water quality criterion... are consistent with the assumptions and requirements of **any available wasteload allocation [of a TMDL]** for the discharge...*

What is the “baseline”?



- EPA’s Water Quality Trading Policy (2003)
 - “...the baselines for generating pollution reduction credits should be derived from and consistent with **water quality standards**. The term pollution reduction credits ... means pollutant reductions greater than those required by a regulatory requirement or **established under a TMDL**”
- EPA’s Water Quality Trading Toolkit for Permit Writers (2007)
 - “Baselines apply to **both a buyer and a seller** ... The baselines for water quality trading are the NPDES permit limits (for point sources) or BMPs (for nonpoint sources) that would **apply in the absence of trading**”

Where is the controversy?

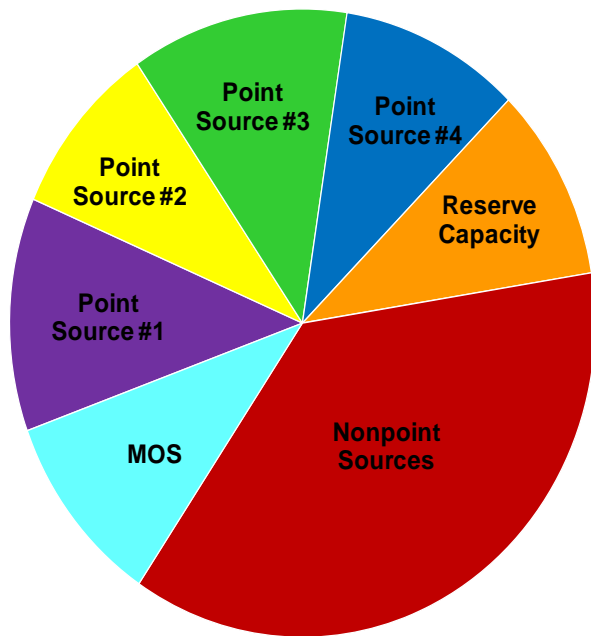


Nonpoint Source Baseline under a TMDL

- Toolkit: EPA would not support a trading program that allows nonpoint sources to sell credits if the discharge is contributing to water quality impairment; therefore, nonpoint sources should meet their portion of the LA before generating credits to sell on the credit market.



Total Maximum Daily Loads (TMDLs)



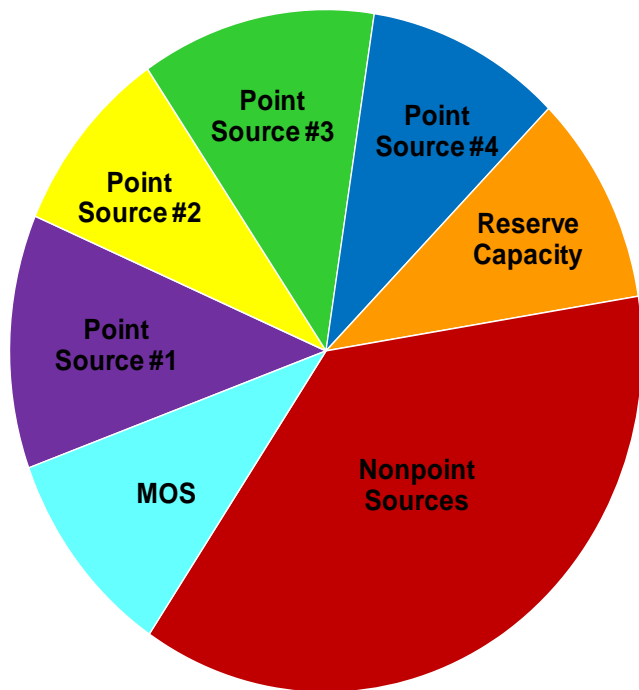
- Establishes waterbody cap
- Assigns allocations to pollution sources
- Discharges above those allocations are
 - Not meeting the assumptions and requirements of the TMDL
 - Causing or contributing to an excursion above water quality standards

Nonpoint Source Baseline under a TMDL

- Toolkit: EPA would not support a trading program that allows nonpoint sources to sell credits if the discharge is contributing to water quality impairment; **therefore, nonpoint sources should meet their portion of the LA before generating credits to sell on the credit market.**



Disaggregating the Load Allocation – Performance-based Approach



- ◆ Hypothetical Example:
- ◆ TMDL sets 50% reduction in the LA - Reduce loadings from 200 lbs to 100 lbs.
- ◆ LA is comprised of 4 farms
 - ◆ Farm 1 – No reduction (current loading 50 lbs)
 - ◆ Farm 2 – No reduction (current loading 50 lbs)
 - ◆ Farm 3 – 80% reduction (loadings reduced from 50 lbs to 10 lbs, generates credits)
 - ◆ Farm 4 – No reduction (current loading 50 lbs)
- ◆ Point source can trade with Farm 3 for all credits beyond the 50% required reduction.
(15 lbs x trade ratio. 50 lbs pre-TMDL loading= 10 lbs current loading + 25 lbs to baseline+ 15 to credits)

Disaggregating the Load Allocation – Practice-based Approach in Virginia

- **Baseline: Control measures that if implemented statewide would meet the TMDL load allocation**
- Control measures
 - Soil Conservation Plan
 - Nutrient Management Plans
 - Cover Crops
 - Livestock Stream Exclusion w/ 35' buffer
 - 35' Riparian buffer
- BMPs beyond these measures would be eligible to generate credits.
- Land conversion also eligible to generate credits



Conclusion

- Meeting a TMDL is not optional for point sources, and this includes the credits they apply to their permits
- Protective NPS baselines under a TMDL are important both to protect water quality and to ensure permits are legally defensible.
- There are a wide variety of ways to implement these baselines. The key factor is linking any such baseline back to the TMDL.

For More Information

- Amelia Letnes
 - Letnes.Amelia@epa.gov
 - (202) 564-5672
- <http://water.epa.gov/type/watersheds/trading.cfm>