



## COLORADO

Department of Public  
Health & Environment

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# BRIEFING MEMO

To: Nutrients Work Group  
From: Nicole Rowan  
Date: October 26, 2016  
Subject: Regulation #85 Trading Provisions

## Summary

The Water Quality Control Division (division) recommends no changes to the trading provisions for Regulation #85 at this time, except for a minor typographical correction.

## Issue and Background

As part of the 2015 Regulation #85 Triennial Review Informational Hearing, the division proposed that the scope of the rulemaking include the Regulation #85 trading provision. The provision as written takes into account instream water quality. While no nutrient trades have been implemented under Regulation #85, one permittee has met with the division to discuss trading and the trading scheme that was discussed at that meeting did not consider instream water quality but contemplated an overall balance in watershed nutrient loading. Prior to recommending any changes to Regulation #85 the division will consider the long-term implementation implications of allowing trades based on watershed loading versus instream water quality.

## Discussion

As discussed above, the one trading scheme that has been discussed under Regulation #85 was similar to the trades that permittees conduct as part of Colorado's Reservoir Control Regulations, which focus on trades that provide a net water quality benefit in the control regulation basin and focus on in-lake protection. Regulation #85's trading provisions for point source to point source trades states "...that the trade will result in equal or better instream water quality for that parameter at all locations and at all times". For nonpoint source to point source trades the regulation states "...that the trade achieves a net water quality or environmental benefit and does not cause adverse localized impacts". Therefore, the trading option described above would not be allowed under Regulation #85.

The Regulation #85 trading provision is consistent with the division's Colorado Pollutant Trading Policy and national approaches for trading for rivers and streams. Because there are no total nitrogen and total phosphorus standards below domestic wastewater treatment facilities at this time, Regulation #85 could be modified to allow watershed based trades instead of requiring that instream water quality be protected in all locations and at all times. This could allow some domestic wastewater treatment facilities some operational flexibility. However, once total nitrogen and total phosphorus criteria for streams are approved by the EPA, trades that are based on watershed protection but which cause localized impacts would no longer be acceptable. Therefore, the division's current thinking is that the trading provisions in Regulation #85 should not be changed to allow temporary flexibility for trades, because such trades would not be viable in the long-term.



The second paragraph of Section 85.5(3)(d)(ii) states that “Nonpoint source to point source trades shall be based on a minimum 2:1 ratio, but may be revised based on site-specific data that demonstrates a lower ratio achieves the criteria specified in Section 85.3(d)(ii).” Given that there is no “Section 85.3(d)(ii),” this reference is an error. The reference is to the language in the first paragraph of this section. Therefore, the division suggests that this error could be corrected with the following change:

Nonpoint source to point source trades shall be based on a minimum 2:1 ratio, but may be revised based on site-specific data that demonstrates a lower ratio achieves the criteria specified in the paragraph above ~~Section 85.3(d)(ii)~~.

## Conclusion

At this time, the division recommends no changes to the trading provisions in Regulation #85, except for the minor typographical correction, based on the following:

- A change in regulation would not result in long-term flexibility or long-term trades because once standards for total nitrogen and total phosphorus are approved by EPA, the existing trading policy will need to be followed. The economics of the trade could be compromised due to its short-term nature.
- The division's trading policy was adopted in 2004 and there have not been any trades attempted during that period. A better use of the division's and the work group's resources may be to address how to implement trades for nutrients with the existing policy.

## Proposal

None at this time.

Schedule:	Initial discussion	November 1, 2016
	Comments due	December 23, 2016
	Follow-up	January 12, 2017

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