

# **Legal and Financial Liabilities A Water-Quality Trading Perspective**

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# Legal and Financial Liabilities

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## WWTPs and the Clean Water Act

### A Love/Hate Relationship

#### Love

Clear goals and rules

Rules for regulators

Generally practical and achievable

Permit as a shield

# Legal and Financial Liabilities

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## WWTPs and the Clean Water Act

### A Love/Hate Relationship

#### Hate

CWA strict liability

Many levels of consequence for violations

Potentially severe civil and criminal sanctions

State/Federal Control

Bad PR

Overly prescriptive

Expensive to comply with

# Legal and Financial Liabilities

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Realities of NPDES Permits and Trading

Legal liability is not transferable

Trades will be incorporated into NPDES permits

# Legal and Financial Liabilities

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## Realities of NPDES Permits and Trading

Required elements in permit and/or fact sheet

Description of how the trade was designed

Description of how the trade is consistent with water-quality standards

Consistency between trade design and units and averaging periods specified in the permit

# Legal and Financial Liabilities

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## Realities of NPDES Permits and Trading

Trades will be incorporated into NPDES permits

### Optional approaches for incorporating trades

Use of a general or watershed permit

Incorporation of trades by reference to the state's adopted trading program

Incorporation of all trading rules

# Legal and Financial Liabilities

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## Minimizing Legal Liabilities

Sound trading program design

Good program design can alleviate PS concerns and create more demand for trading

Issues of legal liability should be addressed by all parties (EPA, state, dischargers, NPS interests) in the creation of the trading program

Sound planning by the WWTP

Careful assessment of risk of default by credit supplier

# Legal and Financial Liabilities

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## Minimizing Legal Liabilities

Carefully constructed contract with the credit supplier

Biosolids contracts

Existence of a “reconciliation and truing up” period at the end of the averaging period

Existence of an emergency or backup source of credits

Regulatory recognition/certification of credits