

**BEFORE THE ARKANSAS POLLUTION CONTROL
AND ECOLOGY COMMISSION**

**IN RE: REQUEST BY THE NORTHWEST)
ARKANSAS NUTRIENT TRADING)
RESEARCH AND ADVISORY GROUP)
TO INITIATE RULEMAKING TO)
ADOPT PROPOSED REGULATION)
NO. 37)**

DOCKET NO. _____

**PETITION TO INITIATE THIRD-PARTY RULEMAKING TO ADOPT
PROPOSED REGULATION NO. 37**

The Northwest Arkansas Nutrient Trading Research and Advisory Group (“NANTRAG”) respectfully requests that the Commission initiate rulemaking to adopt a new regulation, Proposed Regulation No. 37, to govern nutrient water quality trading. In support of its Petition NANTRAG states the following:

1. In 2015, the Arkansas General Assembly enacted legislation authorizing the Commission “to adopt regulations . . . governing the establishment and implementation of nutrient water quality trading programs.” Act No. 335 of 2015, *codified at* Ark. Code Ann. §§ 8-4-232 and -233.
2. The 2015 legislation also established a Nutrient Water Quality Trading Advisory Panel. The legislation called for the Advisory Panel to review any proposed nutrient trading regulation before it is considered by the Commission and make a recommendation whether the Commission should initiate rulemaking to adopt the proposal. Ark. Code Ann. § 8-4-233(g)–(h).
3. The 2015 legislation authorized the Department to issue permit terms and conditions utilizing nutrient water quality trading credits and offsets pursuant to the regulations. Ark. Code Ann. § 8-4-232(c). The Department may also adopt “fees to be collected . . . from

persons or entities utilizing nutrient water quality trades or offsets to comply with permit limits.”

Ark. Code Ann. § 8-4-232(b)(2)(E)(i).

4. In 2016 four Northwest Arkansas cities – Fayetteville, Springdale, Bentonville, and Rogers – formed NANTRAG as a cooperative group for the following purposes:

- Joint development of nutrient water quality trading regulations for proposal to the Arkansas Department of Environmental Quality, the Arkansas Pollution Control and Ecology Commission, the Arkansas Natural Resources Commission, and/or other applicable state and/or federal agencies;
- Exploration of potential nutrient water quality trading projects, including one or more possible pilot projects; and
- Contracting with professionals necessary to accomplish the Group’s objectives.

5. In 2016, NANTRAG developed a “Discussion Draft” of a proposed nutrient trading regulation. NANTRAG distributed the Discussion Draft informally to the Advisory Panel and a variety of stakeholders, including representatives of ADEQ, the Arkansas Natural Resources Commission, the Environmental Protection Agency, Beaver Water District, Illinois River Watershed Partnership, Arkansas Public Policy Panel, Arkansas Farm Bureau Federation, and the University of Arkansas Water Resources Center. Based on comments and feedback from the Advisory Panel and stakeholders, NANTRAG revised its original Discussion Draft nutrient trading regulation.

6. On October 12, 2017, NANTRAG submitted its revised draft nutrient trading regulation to the Advisory Panel for review. NANTRAG gave a formal presentation on the revised draft regulation at a meeting of the Advisory Panel on October 23, 2017. At that meeting the Advisory Panel agreed to meet in December by telephone conference call and formally vote on its recommendation regarding NANTRAG’s draft regulation.

7. Following the October 23, 2017 Advisory Panel meeting, NANTRAG solicited additional comments from members of the Advisory Panel and from stakeholders, including Beaver Water District and Farm Bureau. In response to the comments it received, NANTRAG made further revisions to its draft nutrient trading regulation.

8. On December 8, 2017, NANTRAG submitted its revised draft nutrient trading regulation to the Advisory Panel and formally asked the Advisory Panel, “to recommend that the Arkansas Pollution Control & Ecology Commission initiate rulemaking to adopt NANTRAG’s draft trading regulation, as revised.”

9. The Advisory Panel met by telephone conference call on December 14, 2017, to consider NANTRAG’s request for a recommendation to the Commission. In the meeting, members of the Advisory Panel proposed four amendments to NANTRAG’s draft trading regulation:

- (i) a proposal regarding inspections;
- (ii) a proposal regarding evaluation of adverse effects on drinking water reservoirs;
- (iii) a proposal regarding the siting of projects located in the watershed of a drinking water reservoir; and
- (iv) a proposal to add a minimum numeric discounting ratio.

NANTRAG stated that it was neutral regarding the first two amendments and the Advisory Panel adopted those changes unanimously. NANTRAG expressed opposition to the other two amendments. The Advisory Panel adopted the third amendment by a divided vote and rejected the fourth by a divided vote. With the three amendments that were approved, the Advisory Panel voted unanimously to recommend that the Commission initiate rulemaking to adopt NANTRAG’s draft nutrient trading regulation.

10. The draft nutrient trading regulation establishes the requirements, standards and procedures for the Director to review and approve applications for nutrient credit generating projects as sources of nutrient credits. Where authorized, the nutrient credits may then be used as offsets to nutrient discharges when determining compliance with permit terms, limits and conditions.

11. In conformity with the Advisory Panel's recommendation, NANTRAG asks the Commission to initiate rulemaking to adopt the NANTRAG nutrient trading regulation. The nutrient trading regulation is proposed as a new stand-alone regulation, APCEC Regulation No. 37. A blackline version of proposed APCEC Regulation No. 37 is attached as Exhibit A and incorporated by reference.

12. The Department has indicated its intent to separately adopt fees for the proposed Regulation No. 37 as part of APCEC Regulation No. 9 – *Fee Regulation*.

13. A copy of the Governor's approval letter, consistent with Executive Order 15-02, is attached as Exhibit B and incorporated by reference.

14. A copy of the Legislative Questionnaire is attached as Exhibit C and incorporated by reference.

15. A copy of the Financial Impact Statement is attached as Exhibit D and incorporated by reference.


16. A copy of the Economic Impact/Environmental Benefit Analysis required by APCEC Regulation No. 8, § 8.812 is attached as Exhibit E and incorporated by reference.

17. A copy of the proposed Minute Order to initiate rulemaking is attached as Exhibit F and incorporated by reference.

WHEREFORE, the Northwest Arkansas Nutrient Trading Research and Advisory Group requests that the Commission initiate rulemaking to adopt proposed APCEC Regulation No. 37.

Respectfully submitted,

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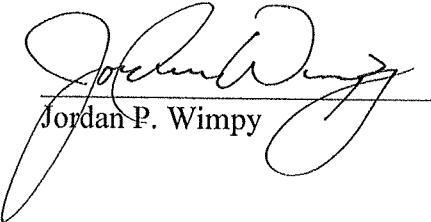
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**Counsel for the Northwest Arkansas Nutrient
Trading Research and Advisory Group**

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of January, 2018, I served a true and correct copy of the foregoing Petition to Initiate Third-Party Rulemaking to Adopt Proposed Regulation No. 37 on the following by United States Postal Service, postage prepaid and by electronic service:

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