

29 March 2018

Verbal Comments

Waldron Hall – Don Tyson Center
1371 West Altheimer Dr.
Fayetteville, AR 72704

Re: Regulation 37 – Arkansas Nutrient Water Quality Trading Regulation

For those of you that don't know me, I am your White River Waterkeeper.

In a nutshell, nutrient trading functions similar to cap and trade programs for greenhouse gas emissions – where one entity reduces their nutrient contributions to offset the discharges from another source. Some critics question if the Clean Water Act allows evasion of point source discharge limits. However, others focus on the capstone benefits of pollution trading that creates a market-based incentive for voluntary nonpoint source pollution reduction while allowing point source dischargers with a cheaper alternative to meet permit limits. Although, I have been told that delaying investments in WWTP infrastructure upgrades results in higher costs, in the long run. However, I haven't been able to confirm or deny these claims with any data. Perhaps members of NANTRAG can help point me in the right direction of where to find data evaluating the long-term costs of kicking the can down the road. But here are a few things I can tell you with certainty –

- Unless the regulation specifically defines where trades can take place, and the proximity of credit purchases and credit sales – **we will** be sacrificing the quality of some waters for the benefit of others.
 - For examples, look to Pennsylvania, where pollution credits are being generated by moving millions of pounds of animal manure from one impaired watershed to another, simply shifting the burden to other communities instead of solving the problem.¹
- Without defining what specific evidence constitutes substantial proof that nonpoint source projects are achieving the water quality improvements they claim – or even that projects were carried out *as planned* – there will undoubtedly be a lot of abuse as well as actual reductions falling far below projected targets. As it stands now, there are no **requirements** than **any** inspections actually take place, before, during, or after project implementation.
- Assuming one could trust that this program won't be abused, one **could** create a margin of safety that an actual overall reduction in water quality should be achieved by defining

¹ Food and Water Watch. 2015. Water Quality Trading: Polluting Public Waterways for Private Gain. https://www.foodandwaterwatch.org/sites/default/files/rpt_1510_waterqualitytrading-final2-web.pdf



credit offset ratios – but that’s not the case here either. **Applicants get to define what credit ratio they want to use.**

Proponents will tell you that the reason for pushing through a regulation completely devoid of all necessary details is to achieve a higher number of trades – and I can’t argue that. I’m sure that is true. But I don’t care how many trades occur. My metrics of success for this program will be focused solely on maintaining and improving water quality.

And when proponents say that allowing this regulation to be completely devoid of necessary details *is a good thing* because ADEQ has the leeway to “fill in the gaps” so to speak – well, I can tell you with the **upmost** certainty – that will not be the case.

Regulatory agencies and oversight commissions are undoubtedly subjected to political interference.

Speaking from the perspective of someone who has worked for ADEQ and has firsthand experience in trying to interpret poorly constructed water quality regulations - when I was a Senior Ecologist, in the Water Quality Planning Section, and I was asked to review permits and regulation changes to provide perspective on ecological effects - it was *extremely rare* when I could convince a bunch of engineers that more protective measures should be required. Despite the fact that our laws and regulations allow for discretion on behalf of the Department to protect the environment for the well-being of all Arkansans – it was *extremely rare* when the default was not always the less restrictive option possible. If it isn’t specifically stated in the regulation, then ADEQ’s decision does not carry much weight.

Even more than that, when it came to simply *recommending* things to applicants that were not specifically **REQUIRED** by the regulations, I was asked... Well, I was asked many times, to be honest, but eventually, I was **TOLD** that under no circumstances could I even *recommend* things that were outside the requirements of our existing regulations.

So, no. Requiring that ADEQ be responsible for deciding how best to protect public health and the environment without outlining that in this regulation – no, I absolutely do not accept that.

We cannot forget what is at stake here. There are numerous studies documenting significant economic losses or increased costs associated with anthropogenic nutrient pollution.

- Declining tourism and recreation
 - In Ohio, reports showed \$37-\$47 million in lost local tourism revenue over two years from impacts to one lake.²
- Negative impacts to commercial fishing³
- Human health effects⁴
- Increased drinking water treatment costs

² A Compilation of Cost Data Associated with the Impacts and Control of Nutrient Pollution
<https://www.epa.gov/sites/production/files/2015-04/documents/nutrient-economics-report-2015.pdf>

³ *Id.*

⁴ *Id.*

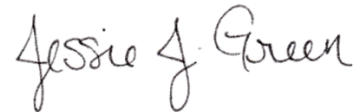


- Again, in Ohio, a study documents expenditures of over \$13 million in two years to treat drinking water from a lake affected by algal blooms.⁵
- Substantial costs of mitigating and resorting waterbodies impacted by nutrient pollution;⁶ and
- Declines in property values, with A study in New England noting a 1-meter difference in water clarity associated with property values decreasing greater than 78%.⁷

If our state needs a nutrient trading program, then **we need to adopt numeric nutrient criteria first**. At least then we wouldn't be putting the cart before the horse, and we could have some sense of security that we would have an *objective* measure of success and a legitimate baseline target for nutrient reductions.

But don't get me wrong, I like the *idea* of nutrient trading as much as anyone else. However, **vague, arbitrary, and subjective regulations do not work**. Unless the goal is to create a pay-to-pollute scheme to evade adequate water quality protections. If that's the goal – then this will do it.

Thank you.



Jessie J. Green
Executive Director & Waterkeeper

⁵ Davenport, T. and W. Drake. 2011. EPA Commentary: Grand Lake St. Marys, Ohio – The Case for Source Water Protection: Nutrients and Algae Blooms. Lakeline, Fall 2011: 41-46.

⁶ A Compilation of Cost Data Associated with the Impacts and Control of Nutrient Pollution.

⁷ Boyle, K. J., S. R. Lawson, H. J. Michael, and R. Bouchard. (1998). "Lakefront Property Owners' Economic Demand for Water Clarity in Maine Lakes." Misc. Report No. 410, Maine Agricultural and Forest Experiment Station, University of Maine, Orono.

<http://www.moosepondassociation.org/Articles/General/Demand%20For%20Water%20Clarity.pdf>