



## Arkansas Department of Health

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**Governor Asa Hutchinson**

**Nathaniel Smith, MD, MPH, Director and State Health Officer**

April 6, 2018

Kelly Robinson  
Arkansas Department of Environmental Quality  
5301 Northshore Drive  
North Little Rock, AR 72118-5317  
Reg-comment@adeq.state.ar.us

RE: Proposed Third-Party Rulemaking APC&EC Docket Number # 18-001-R  
The Northwest Arkansas Nutrient Trading Research and Advisory Group ("NANTRAG")  
Draft Regulation 37 – Nutrient Trading

Dear Ms. Robinson,

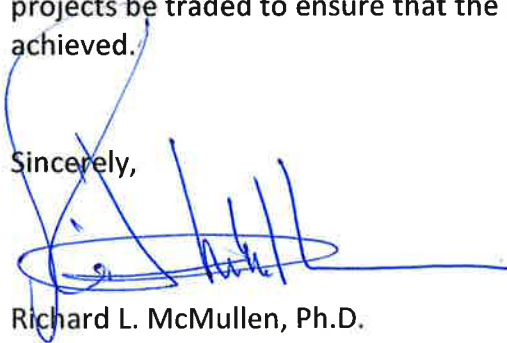
The Arkansas Department of Health has reviewed the proposed Draft Regulation 37 and submits the following comments. Implementation of this regulation in its current form would potentially expose public water systems (PWS) to increased treatment costs as a result of increased nutrient loads. Nutrient trading can be a valuable tool for municipalities to meet the requirements of their NPDES permits; however, the draft regulation lacks sufficient protection for drinking water sources. Public health would be best protected only if nutrient credit generators were located upstream of nutrient credit buyers in watersheds containing drinking water source waterbodies.

The currently proposed regulation would allow a nutrient credit buyer to purchase credits from a nutrient credit generator downstream of their discharge. This could result in an increase of nutrients in segments of the waterbody between the buyer and seller locations. Any PWS intake located between the buyer and seller would then be exposed to higher nutrient levels. The PWS could potentially incur increased treatment costs in order to meet the National Primary Drinking Water Standards. An increase in nutrients would also increase the likelihood of harmful algal bloom formation and cyanotoxin contamination in the drinking water source.

The currently proposed regulation lacks a clearly defined process to evaluate non-point source nutrient credits and the generators of those credits. The process should specify what evidence

would be acceptable to prove that no increase in nutrient loading would occur and that the offset would not have a significant adverse impact on water quality within a drinking water source. Additionally, all nutrient trading should involve comparable nutrient credits such as nitrogen for nitrogen. Furthermore, nutrient credits should be evaluated and traded using unit mass per unit time of measures that are consistent with TMDL language, such as pounds per day. Finally, the regulation should stipulate that only new non-point source credit-generating projects be traded to ensure that the goal of reducing nutrients in a drinking water source is achieved.

Sincerely,



Richard L. McMullen, Ph.D.  
Associate Director for Science, Center for Local Public Health  
State Environmental Health Director, Environmental Health Branch

RM:JS:LG:DR:bg

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