

**NANTRAG Comments Concerning  
APC&EC Reg. No. 37 – Arkansas Nutrient Water Quality Trading Regulation**

The Northwest Arkansas Nutrient Trading Research and Advisory Group (“NANTRAG”) is the proponent of Arkansas Pollution Control and Ecology Commission (“APC&EC” or “Commission”) Regulation No. 37 – *Arkansas Nutrient Water Quality Trading Regulation* (the “Regulation”). Since filing its petition NANTRAG has engaged in an extensive outreach effort to meet, discuss with, educate, and *learn from* any and all stakeholders interested in the Regulation. Based on these informative discussions, NANTRAG submits the following comments to the public record –

- NANTRAG heard from several interested parties that the Regulation should consider a minimum trading ratio to account for uncertainties in the reduction in nutrient loading achieved by non-point source projects. NANTRAG reviewed trading regimes in other states, guidance documents, and other resources and concludes that a minimum trading ratio for non-point source projects has merit and utility. Accordingly, NANTRAG proposes the following revision to include a new Section 2(G)(4), which should state:

(4) *For projects generating credits by non-point source activity, a minimum credit ratio of 1.5:1 (nutrient reduction to nutrient credit) shall be applied when calculating the credit quantity.*

- The Regulation should be revised to include a reference to the enabling legislation and statutory authority for the nutrient water quality trading regulation. NANTRAG proposes a new Section titled “Authority” that states:

*This regulation is adopted under the authority of Act 335 of 2015, codified at Ark. Code Ann. §§ 8-4-232 and 8-4-233.*

- Arkansas Code Annotated section 8-4-232(a) requires that any nutrient water quality trading program or arrangement must provide that a decision to participate in the program is a matter of voluntary choice on the part of each participant. NANTRAG therefore proposes a revision in the Regulation to include new language stating:

*Participation in any Nutrient Credit Generating Project under this regulation shall be purely voluntary.*

- NANTRAG believes that current Section 3(C) should be removed in its entirety. The language is unnecessary. Under the terms of the Regulation, the only inspections that will take place are the inspections proposed by the project’s applicant and approved by the Director pursuant to Section 2(G)(3). Accordingly, Section 3(C) is unnecessary and should be stricken from the Regulation.

- Some stakeholders suggested a revision to the Regulation to require that applicants identify the individuals or entities responsible for inspection, verification and documentation of the credit generating project's implementation. In addition to providing clarity in the Regulation, this change also ties together the requirement of the Director to identify persons responsible for inspection and verification and the non-point source applicant's discretion to select the persons responsible for inspection and verification. NANTRAG therefore proposes new language in Section 2(A)(8) to state:

(8) *A description of the methods by which the implementation and performance of the credit-generating project will be verified and documented, and the identity of the person or entity responsible for inspection, verification and documentation;*

Nothing in NANTRAG's proposed language is intended to limit ADEQ's traditional authority under the Federal Clean Water Act, the Arkansas Water and Air Pollution Control Act, and relevant APC&EC regulations.

- NANTRAG fully supports all efforts and methods to ensure the public is properly informed of applications for Nutrient Credit Generating Projects. An interested person proposed that the Regulation should provide that public notice of applications will be published in an electronic medium, in addition to the public notice requirements required by APC&EC Regulation No. 8 and the Federal Water Pollution Control Act's public participation requirements. We agree. Specifically, NANTRAG proposes the following additions to existing Section 2(C):

(C) *Applications submitted to the Director of the Arkansas Department of Environmental Quality shall comply with the public notice procedures and requirements under Regulation No. 8, 8.205. Applications shall also be publicly noticed through electronic notice and publication on the Arkansas Department of Environmental Quality website.*

- An interested person also proposed revisions to the first sentence of Section 2(H) of the Regulation in order to provide additional clarity. Section 2(H) should be revised as follows:

(H) *Prior to taking final action on a request for approval of a Nutrient Credit Generating Project, the Director shall cause public notice to be published ~~in a newspaper of general circulation~~ within the watershed where the credit will be generated in a newspaper of general circulation and on the Arkansas Department of Environmental Quality website. The Public shall be allowed a period of not less than thirty (30) calendar days in which to submit written comments. The decision to grant or deny approval of a Nutrient Credit Generating Project shall include a written response to all issues raised in the comments submitted during the public comment*

*period. A copy of the final decision granting or denying certification of a Nutrient Credit Generating Project shall be sent to the applicant and each person who submitted written comments within the public comment period. The Director's decision to grant or deny approval of a Nutrient Credit Generating Project shall be subject to review as a permitting decision under Regulation No. 8, Reg. 8.603.*

NANTRAG appreciates the opportunity to submit comments and to provide its input to the Commission for consideration. NANTRAG supports the above-stated revisions to the Regulation and fully supports the Commission's adoption of the Regulation.