



November 5, 2018

TO: Arkansas Department of Environmental Quality
ATTN: Raeanne Gardner
5301 Northshore Drive
North Little Rock, AR 72118-5317

FROM: Arkansas Farm Bureau Federation
John Bailey, P.E.
Director, Environmental & Regulatory Affairs
P.O. Box 31
Little Rock, AR 72203

RE: Comments on the Draft APC&EC Regulation 37

Ms. Gardner:

The following comments are submitted by the Arkansas Farm Bureau Federation regarding the proposed Arkansas Pollution Control & Ecology Commission Regulation 37. Our organization is a non-profit agriculture advocacy association with more than 190,000 members, of whom 50,000 are directly engaged in agriculture production. Farm Bureau is submitting the following comments in response to the arbitrary removal of language from the draft Regulation 37 that was previously approved by the Nutrient Water Quality Trading Advisory Panel. This language authorized the Arkansas Natural Resources Commission (ANRC) to perform non-point source best management practice inspections under limited and specific circumstances.

Proposed Regulation 37 authorizes the Arkansas Department of Environmental Quality to approve Nutrient Trading Generating Projects through the NPDES permitting process. More specifically, the proposed Regulation 37 discusses requirements for a Nutrient Credit Generating Project between a point source and non-point source. It should be noted that any reductions in nutrient loading for a non-point source are almost exclusively accomplished through the installation of best management practices with guidance from and approval by the Arkansas Natural Resources Commission. According to the proposed regulatory requirements any trade involving a non-point source project must include in an application “methods by which the implementation, performance, and operation and maintenance of the of the credit generating project will be verified and documented, and the identity of the person or entity responsible for documenting the verification” and submitted to the Arkansas Natural Resources Commission for review prior to submitting to ADEQ for approval. Depending on which best management practice is being implemented, verification and documentation can be completed by third parties such as the county conservation districts or, in the case of the Illinois River Watershed which is most likely where the first

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trades will occur, the Illinois River Watershed Partnership and agreed upon by both parties prior to seeking approval. If during the review process the ANRC or ADEQ have any comments or requested changes they must be addressed before approval is granted. In any event, both parties would be aware of the requirements prior to execution of the plan and would have the opportunity to withdraw from the project if the requirements become too cumbersome.

The question that most concerns Farm Bureau is, after a Nutrient Trading Credit Generating Project has been approved and executed is; who would perform inspections that cannot be verified through the Nutrient Credit Generating Plan inspections which may be necessary to evaluate proper maintenance of a non-point source best management practices? The previous version of the proposed Regulation, which was reviewed by the ADEQ and approved by the Nutrient Water Quality Trading Advisory Panel, contained the following language:

“All inspections necessary to determine compliance with a non-point source nutrient trading credit generating project that cannot be verified through the approved Nutrient Credit Generating Project application will be performed by the Arkansas Natural Resources Commission.”

This proposed language was appropriate for the following reasons:

- ANRC has the understanding and staff necessary to evaluate proper implementation of any non-point source best management practice. Not to say that ADEQ staff could not be trained to perform these inspections, but any training would be done by ANRC.
- The proposed language would eliminate regulatory confusion. The proposed language is consistent with current regulatory compliance. Currently ANRC regulates nonpoint source best management practices and ADEQ regulates point source discharge and has inspection authority to investigate pollution complaints. If the language is removed, non-point sources, particularly farmers and ranchers, who participate in nutrient trading will be regulated by a different state agency than those who do not participate, even though they will be doing the exact same activity. The proposed language would make it clear the regulatory agency does not change, eliminating any confusion and providing consistency for those that will participate and those that will not participate in nutrient trading.

In addition, the ADEQ’s comments submitted to NANTRAG by the Associate Director for the Office of Water Quality Caleb Osborne recommend the inclusion of language to clarify that nothing in this regulation in any way infringes on ADEQ’s authority to conduct compliance or complaint inspections as authorized by its statutory and regulatory authority. Farm Bureau agrees with ADEQ’s recommendation and as a matter of fact the requested language was added to the currently drafted regulation. However, ADEQ did not request the language in question be removed, but for some reason it was. ADEQ’s comment goes on to say “For a [Nutrient Credit Generating Project] involving non-point sources, ADEQ will request assistance from ANRC in conducting periodic inspections, responding to complaints, reviewing reports, and other actions necessary to monitor compliance with the applicable permit. ADEQ and ANRC may establish an interagency agreement for these purposes.” Arkansas Farm Bureau

encourages ADEQ and ANRC to implement an interagency agreement to provide assurance to farmers and ranchers throughout the state; however, without an agreement in place at this time it is difficult to evaluate potential impacts to non-point sources.

Finally, the proposed language was reviewed and approved by the Nutrient Water Quality Trading Advisory Panel, which was created per A.C.A § 8-4-233 and appointed by the Governor. No legal justification was provided as to why the language was removed; therefore, per § 8-4-233(h) the language should be reinserted for APC&EC review. While Arkansas Farm Bureau policy currently supports Nutrient Trading in general, we are in the middle of our policy development process and several county Farm Bureaus, specifically the Benton and Washington county Farm Bureaus, have submitted resolutions in support of nutrient trading only if ANRC conducts non-point source best management compliance inspections. Therefore, Arkansas Farm Bureau we will not be able to support the Regulation as proposed and we respectfully request that the aforementioned language be reinserted back into the Regulation 37.