

State of Arkansas  
90th General Assembly  
Regular Session, 2015

As Engrossed: H2/18/15  
**A Bill**

HOUSE BILL 1067

By: Representatives Collins, Davis, *Ballinger, Beck, Bell, Bentley, Cozart, Della Rosa, C. Douglas, Eubanks, Gonzales, M. Gray, Hillman, G. Hodges, Ladyman, Leding, Neal, Petty*

By: Senator U. Lindsey

### For An Act To Be Entitled

AN ACT TO AMEND THE LAWS PERTAINING TO THE  
PROMULGATION OF WATER QUALITY REGULATIONS AND THE  
ISSUANCE OF WASTEWATER DISCHARGE PERMITS; TO  
AUTHORIZE THE IMPLEMENTATION OF NUTRIENT WATER  
QUALITY TRADING, CREDITS, OFFSETS, AND COMPLIANCE  
ASSOCIATIONS; AND FOR OTHER PURPOSES.

### Subtitle

TO AMEND THE LAWS REGARDING WATER QUALITY  
REGULATIONS AND WASTEWATER DISCHARGE  
PERMITS; AND TO AUTHORIZE NUTRIENT WATER  
QUALITY TRADING, CREDITS, OFFSETS, AND  
COMPLIANCE ASSOCIATIONS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative findings and intent.

The General Assembly finds that:

(1) Water quality trading is a market-based approach to achieving water quality goals that can provide greater efficiency and cost savings by allowing one (1) source to meet its regulatory obligations by using pollutant reductions created by another source that has lower pollution control costs;

(2) Experience in other states has demonstrated that nutrient water quality trading programs, including the use of credits, offsets, and



compliance associations, can result in quicker and more efficient achievement of water quality protection goals; and

(3) Nutrient water quality trading should be encouraged wherever appropriate and facilitated by the development of applicable regulations and permit terms.

SECTION 2. Arkansas Code Title 8, Chapter 4, Subchapter 2, is amended to add an additional sections to read as follows:

8-4-232. Nutrient water quality trading programs.

(a) As used in this section, "nutrient" means a substance assimilated by an organism that promotes growth and replacement of cellular constituents, including without limitation nitrogen, phosphorus, and carbon.

(b)(1) The Arkansas Pollution Control and Ecology Commission may adopt regulations that specify requirements, standards, and procedures governing the establishment and implementation of nutrient water quality trading programs, including without limitation program scope, eligibility, and threshold treatment requirements.

(2) The nutrient water quality trading programs may include without limitation the following:

(A) The establishment and regulation of nutrient water quality trading exchanges;

(B) The establishment and regulation of nutrient water quality compliance associations;

(C) The authorization and regulation of nutrient water quality trading credits;

(D) The authorization and regulation of nutrient water quality offsets; and

(E)(i) The establishment of a schedule of user fees to be collected by the Arkansas Department of Environmental Quality from persons or entities utilizing nutrient water quality trades or offsets to comply with permit limits.

(ii) The user fees shall be based on a record calculating the reasonable costs to the department of implementing and enforcing each nutrient water quality trading, credit, or offset program.

(c) Under regulations adopted by the commission under subsection (b) of this section, the department may:

(1) Include terms and conditions in any appropriate permit that allow the eligible permit holder to use water quality trading arrangements such as water quality trading credits and water quality offsets as a means for complying with appropriate nutrient effluent limitations or conditions contained in the permit; and

(2) Issue permits to eligible compliance associations as a means for multiple eligible permit holders to collectively satisfy their aggregate permit limits for one (1) or more appropriate nutrient water quality parameters.

(d) A nutrient water quality trading program or arrangement established under this section shall provide that a decision to participate in the nutrient water quality trading program or arrangement shall be a matter of voluntary choice on the part of each participant in the nutrient water quality trading program or arrangement.

8-4-233. Nutrient Water Quality Trading Advisory Panel – Created – Members – Duties.

(a) The Nutrient Water Quality Trading Advisory Panel is created, consisting of *nine (9)* members as follows:

(1) One (1) member appointed by the President Pro Tempore of the Senate;

(2) One (1) member appointed by the Speaker of the House of Representatives;

(3) *Seven (7)* members appointed by the Governor as follows:

(A) One (1) member to represent agricultural interests;

(B) One (1) member to represent forestry interests;

(C) One (1) member to represent municipal wastewater treatment facility interests;

(D) One (1) member to represent public drinking water supply interests;

(E) One (1) member to represent the interests of industries that hold point source wastewater discharge permits; and

(F) Two (2) members to represent the interests of environmental organizations regarding water quality.

(b)(1) A member shall serve a term of two (2) years or until a successor is appointed.

(2) A member may serve successive terms without limitation.

(3) If a vacancy occurs, the officer who made the original appointment for that position shall appoint a person who represents the same constituency as the member being replaced.

(c)(1) A majority of the members shall constitute a quorum for the transaction of business.

(2) Meetings may be conducted with members participating via telephonic or other electronic conferencing methods.

(d)(1) The advisory panel shall elect a chair and vice chair.

(2) The advisory panel may adopt rules relating to the conduct of its meetings.

(e) Members shall serve without compensation but may be reimbursed for expenses in accordance with § 25-16-902, if funds are available.

(f) The Arkansas Department of Environmental Quality shall provide meeting space and administrative services for the advisory panel.

(g) The advisory panel may:

(1) Advise the department and the Arkansas Natural Resources Commission regarding the desirability, design, and operation of nutrient water quality trading programs; and

(2) Advise the Arkansas Pollution Control and Ecology Commission and the Arkansas Natural Resources Commission regarding the promulgation of regulations involving nutrient water quality trading programs.

(h) The Arkansas Pollution Control and Ecology Commission shall not initiate a rulemaking proceeding to adopt a regulation that authorizes or governs nutrient water quality trading unless:

(1) The proposed regulation has been recommended by the advisory panel; or

(2) A copy of the proposed regulation has been delivered to the advisory panel at least sixty (60) calendar days before the date the request to initiate the rulemaking is filed with the Arkansas Pollution Control and Ecology Commission.

(i) Subsection (h) of this section does not limit the authority of the Arkansas Pollution Control and Ecology Commission to:

(1) Alter a proposed regulation at any time during the rulemaking proceeding; or

(2) Initiate a rulemaking proceeding if:

(A) The members of the advisory panel have not been appointed; or

(B) The advisory panel lacks an actively serving quorum.

*/s/Collins*

**APPROVED: 03/06/2015**